(21,131.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 360.

THE WATERS-PIERCE OIL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 25, 1908.

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a

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

1 *Caption.*

THE STATE OF TEXAS, *County of Travis:*

At a term of the District Court of the 26th Judicial District of Texas, begun and holden at Austin, within and for the County of Travis, before the Honorable V. L. Brooks, and ending on the 29th day of June, A. D. 1907, the following case came on for trial, to wit:

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

PROCEEDINGS IN RECEIVERSHIP.

Application for a Receiver. Filed June 1, 1907.

In the District Court, Travis County, Texas, Twenty-sixth Judicial District.

No. 24551.

STATE OF TEXAS, Plaintiff,
vs.
WATERS PIERCE OIL COMPANY, Defendant.

To the Honorable V. L. Brooks, Judge of said Court:

And now comes the State of Texas, acting by and through her Attorney General, and the County Attorney of Travis County, Texas, acting under the direction and supervision of the said Attorney General, and shows to the Court:

First. That on the 1st day of June 1907, in this court, in the above entitled and numbered cause, a judgment was rendered in favor of the State of Texas against the defendant, the Waters Pierce Oil Company for the sum of One Million Six hundred twenty-three Thousand, Nine Hundred Dollars, ($1,623,900.00) and said judgment further providing for the cancellation of the permit of the said defendant to do business in the State of Texas; that said cause of action and said judgment was based upon alleged violation of the Anti-trust law of the State of Texas.

Second. That in a certain suit pending in the State of Missouri, wherein the State of Missouri is plaintiff, and the said above named defendant, the Waters Pierce Oil Company, among others, is
2 defendant, a suit was instituted for the forfeiture of the charter of said defendant, Waters Pierce Oil Company and

prohibiting it doing business in said State, said suit being instituted in the Supreme Court of the State of Missouri; that in pursuance to law the said Supreme Court of the State of Missouri appointed a Commissioner to hear testimony and make his report and findings of fact, and recommendation of law thereon; that after hearing the testimony, the said commissioner found in favor of the State of Missouri on all issues in said case, and recommended to the said Supreme Court of Missouri that the charter of the said Waters Pierce Oil Company be cancelled; that plaintiff is informed and believes that said recommendations have the force and effect of a judgment forfeiting the charter of the said defendant, Waters Pierce Oil Company.

Third. That the penalties recovered in this cause by plaintiff, the State of Texas, cannot be collected outside the state of Texas, and the property of the defendant situated in the State of Texas, as the plaintiff is informed and believes, is wholly inadequate to pay the above mentioned judgment; that the great bulk of the property within the State of Texas belonging to the defendant, subject to the payment of the said judgment, consists of current accounts with merchants and dealers in the State of Texas, of tank cars, of money on hand, of oil that is easily removed, and property of that kind and character, practically the whole of it being personal movable, property, and if carried beyond the limits of this State cannot be pursued by the State of Texas, and the State would have no way of collecting the above mentioned judgment; that under and by virtue of an act of the Legislature of the State of Texas, approved April 11th, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment.

Fourth. That under the judgment of ouster rendered in this cause, the defendant has no right to do business in this State and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State.

3 Wherefore, plaintiff requests the court to appoint a receiver to take charge of all the property and assets of every kind and description of the defendant situated within the State of Texas, pending the hearing of this application; that this court grant its most gracious writ of injunction, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them from removing from the State of Texas any part of the property or assets of said defendant situated within the State of Texas.

R. V. DAVIDSON,
Attorney-General.
JEWEL P. LIGHTFOOT,
Ass't Attorney General.
JOHN W. BRADY,
County Attorney, Travis Co., Tex.
GREGORY & BATTS,
ALLEN & HART,
Attorneys for the State of Texas.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Jno. W. Brady, County Attorney of Travis County, Texas, who, after being by me sworn on his oath, says that the facts stated in the foregoing application are true, except where stated upon information and belief, and where so stated he verily believes them to be true.

JNO. W. BRADY.

Sworn to and subscribed before me this the 1st day of June, A. D. 1907.

ROSE LITTMAN,
Notary Public, Travis Co., Texas.

AUSTIN, TEXAS, *June* 1, 1907.

In Chambers.

4 The above application for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, being presented to me, it is hereby set down for hearing on the 8th day of June, 1907, at 10 o'clock A. M. at the Court House in Travis County, Texas, and the Clerk will issue a notice to the defendant accordingly. Upon consideration, the application for a temporary injunction pending the hearing of said application is hereby granted, and the clerk of this court is instructed to issue such temporary injunction under his hand and the seal of court restraining and prohibiting the defendant, its officers, agents, attorneys and employés, or any of them, from removing beyond the State of Texas, any of the property or assets of defendant until the further orders of this court.

V. L. BROOKS,
Judge 26th Judicial District of Texas.

(Endorsed:) No. 24551. The State of Texas *vs.* Waters-Pierce Oil Co. Application for a Receiver. Filed June 1st, 1907. D. J. Pickle, Clerk, by J. A. Belger, Deputy.

Defendant's Answer to Plaintiff's Application for Receiver.

Filed June 10th, 1907.

In District Court of Travis Co., Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

Now comes the defendant in the above entitled and numbered cause, by its attorneys, and excepts to the application filed by the plaintiff herein on June 1st, 1907, for the appointment of a receiver of the property and assets of this defendant, and says that said application is insufficient in law, and shows no sufficient cause for the appointment of such receiver, and of this defendant prays judgment of the court.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Def't.

And for answer to said application defendant denies all and singular the allegations therein contained.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Def't.

And for further answer to said application, and for the purpose of replying to the portion thereof relating to the said suit pending in the State of Missouri, defendant says that it is not true, as stated in said application that the recommendation of said commissioner have the force and effect of a judgment forfeiting the charter of this defendant, but, on the contrary, no judgment has been rendered in said cause in said Supreme Court of Missouri, and said report of said commissioner does not have the effect of a judgment, but that said report and recommendations of said Commissioner may be either approved or rejected by said Supreme Court of Missouri, and will have no force or effect unless confirmed and approved by said Supreme Court of Missouri.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Before me, the undersigned officer, on this day personally appeared D. W. Odell and R. L. Penn, who each being by me first duly sworn on oath deposes and says that he is one of the attorneys for
6 defendant in the above numbered and entitled cause and that the facts stated in the foreg-ing special plea are true as he is informed and verily believes.

D. W. ODELL.
R. L. PENN.

Subscribed and sworn to before me by D. W. Odell & R. L. Penn, this 10th day of June, A. D. 1907.

[SEAL.] D. J. PICKLE,
Clerk District Court, Travis Co., Texas,
By E. HUPPERTZ, *Deputy.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Defendant's answer to plaintiff's application for Appointment of Receiver. Filed June 10th, 1907. D. J. Pickle, Clerk. By E. Huppertz, Deputy.

Order Granting Injunction, June 1st, 1907.

24441.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

IN CHAMBERS, AUSTIN, TEXAS, *June* 1, 1907.

On this day came on to be heard the application for a temporary injunction, restraining the defendant from removing beyond the State of Texas any of its property or assets, and the Court having considered said application is of the opinion that same should be granted:

It is therefore ordered, adjudged and decreed that the defendant, the Waters Pierce Oil Company, its officers, agents, attorneys and employees, each and all of them, are hereby restrained enjoined and prohibited from removing beyond the limits of the State of Texas any of the property or assets of the said defendant, the Waters Pierce Oil Company, until further orders of this court.

7 *Order Granting Application for Appointment of Receiver, June 10th, 1907.*

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this 10th day of June, 1907, at a regular term of this court, there came on to be heard the application of the State of

Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant the Waters Pierce Oil Company situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such furture time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas; that the temporary injunction heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be and the same is hereby continued in force until the further orders of this court. To all of which action the defendant in open court excepts, and in open court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

Order Appointing Receiver, June 13th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

8 On this, the 10th day of June, A. D. 1907, in this cause an order was made and entered by this court granting the application of the plaintiff the State of Texas, for the appointment of a receiver herein, the court at the time of the making of said order naming as receiver, Robert J. Eckhardt and time being given both parties to urge any objection they might have to said Eckhardt as such receiver, and no objection having been made to said Eckhardt, the court now on this 13th day of June, 1907, confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described said Robert J. Eckhardt, with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two hundred and fifty thousand dollars.

And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

Order Amending Orders Appointing Receiver, June 15th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this 15th day of June, A. D. 1907, at a regular term of this court,

It is considered, ordered, adjudged and decreed by the court that the orders of this court made and entered in said cause on the 10th day of June, A. D. 1907, and on the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

And now on this 10th day of June, 1907, at a regular term of this court there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering
9 said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property and assets of the defendant, the Waters Pi-rce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas, with the right, power and authority to continue the various clerks, servants and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion and to require such bonds and security to himself as Receiver from any of the present employees or those hereafter engaged by him as he may think expedient and proper, and to sell the present stock of oil and other products and personal property in the hands of the defendant and which may come into his hands as receiver and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business so that said business may be kept up to its present condition as near as may be; and the said Receiver shall have power, under control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally do such acts respecting the property as the court may authorize and all the expenses of said receiver-

ship, including taxes, insurance premiums, attorney's fees, his own compensation and all expenses of said receivership to be paid as a part of the Court costs of the suit.

That the temporary injunction heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be and the same is hereby continued in force until the further orders of this court.

To all of which action the defendant in open court excepts, and in open court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of the State of Texas.

And on the 13th day of June, A. D. 1907, the Court confirming said order and in pursuance thereof names and appoints as receiver herein of the property in said order described Robert J. Eckhardt, who is a resident citizen of the County of Williamson, in the State of Texas, with the duties and powers therein named, and fixes the amount of his bond as such Receiver at ($250,000.00) Two hundred and fifty thousand dollars, to be made payable to the Judge of this Court and his successors in office, for the use of all parties interested in said property and this suit.

And defendant renewed its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

Order Fixing Amount of Appeal Bond in Receivership, June 15th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this the 15th day of June, 1907, in open court it is ordered by the court in the above cause, that $100,000.00 be and the same is hereby fixed as the amount of the bond which the defendant shall be required to give in order to supercede the judgment of the court placing defendant's property in the hands of a receiver; and,

It is further ordered that upon the approval by the court and the filing with the clerk by defendant of a good and sufficient bond conditioned as required by law for said amount, further proceedings herein be suspended pending appeal.

But this order shall not effect, rescind the order heretofore entered prohibiting and enjoining the defendant, its servants, officers, agents and attorneys from removing any of its property or assets beyond the limits of the State of Texas, but said injunction shall remain in full force and effect pending the appeal from the order appointing a receiver herein.

And thereupon the defendant in open court tendered to the Court and Clerk certain papers which it stated to be its appeal bond, and

an affidavit with reference thereto, which bond purported to have as sureties thereon the American Surety Company of New York and John H. Kirby, and requested the Court and Clerk to approve the same, but the court deferred further action in the premises and stated that it would announce its further action on said bond at 10 o'clock A. M. June 10th, 1907.

Order Approving Bond of Receiver, June 19th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this 19th day of June, A. D. 1907, Robert J. Eckhardt having presented his oath and bond as Receiver under the appointment heretofore made in this cause, and said bond being examined and found to be in proper form and subscribed with competent sureties as required by law:

It is therefore ordered, adjudged and decreed by the court that the said bond be and the same is hereby approved and the Clerk of this court is directed to file said bond and enter the same in the minutes of this court.

Bond and Oath of Receiver.

12 "THE STATE OF TEXAS, *County of Travis:*

Know all men by these presents; That we, Robert J. Eckhardt, as principal and Francis Horace Welch, F. L. Welch, F. A. Allison, O. E. Roberts, J. Melasky, Jno. P. Sturgis, G. E. King, J. W. Womack, Howard Bland, S. G. Yakey, G. M. Booth, L. H. Goldstein, Carl Grau, C. T. Everett, Albert Eikel, T. W. Marse, C. A. Nelson, O. A. Nelson, W. Davidson, Walter W. Taylor, Howell E. Smith, T. E. Waggoner, R. H. Gaston, T. C. Dunn, J. L. Thompson, W. R. Eckhardt, E. P. Wilmot, P. L. Noroworthy, W. T. Brown, Walter Tips, as sureties, are held and firmly bound unto V. L. Brooks, judge of the District Court of Travis County, Texas, for the 26th Judicial District, and his successors in office, for the use of all parties interested in the action of the State of Texas *vs.* Waters Pierce Oil Company, No. 24,551, in said court and the property in said action placed in the hands of a receiver, in the sum of two hundred and fifty thousand dollars.

The condition of the above obligation is such that, whereas, the said Robert J. Eckhardt has by orders of the said District Court bearing date 10th day of June A. D. 1907, and the 13th day of June A. D. 1907, and amended by an order made and entered in said action in said court on the 15th day of June A. D. 1907, been appointed receiver in said action.

Now, if the said Robert J. Eckhardt shall faithfully discharge all of the duties of Receiver in said action of the State of Texas vs. Waters Pierce Oil Company, No. 24,551, in said court, and obey the orders of the court therein, then this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands, this the 15th day of June, A. D. 1907.

ROBERT J. ECKHARDT.
F. L. WELCH.
FRANCIS HORACE WELSH.
F. A. ALLSION.
J. MELASKY.
O. E. ROBERTS.
JNO. P. STURGIS.
G. E. KING.
J. W. WOMACK.
HOWARD BLAND.
S. G. YAKEY.
G. M. BOOTH.
L. H. GOLDSTEIN.
CARL GRAU.
C. T. EVERETT.
ALBERT EIKEL.
T. W. MARSE.
C. W. NELSON.
O. A. NELSON.
W. DAVIDSON.
WALTER W. TAYLOR.
HOWELL E. SMITH.
T. E. WAGGONER.
R. H. GASTON.
T. C. DUNN.
J. L. THOMPSON,
By L. N. THOMPSON,
Att'y in Fact.
W. R. ECHARDT, M. D.
E. P. WILMOT.
WALTER TIPS.
O. L. NOROWORTHY, M. D.
W. T. BROWN.

Approval.

13 Examined and approved by the undersigned and ordered filed this 19th day of June, 1907, at 10.29 o'clock A. M.

V. L. BROOKS, *Judge.*

Approved June 19th, 1907, 10.35 A. M.

D. J. PICKLE, *Clerk.*

Oath of Receiver.

THE STATE OF TEXAS, *County of Williamson:*

I, Robert J. Eckhardt, do solemnly swear that I will faithfully perform all the duties of Receiver in the action of the State of Texas *vs.* Waters Pierce Oil Company, No. 24551 in the District Court of Travis County, Texas for the 26th Judicial District.

ROBERT J. ECKHARDT.

Sworn to and subscribed before me this 15 day of June, A. D. 1907. Given under my hand and seal of office.

[SEAL.] O. E. ROBERTS,

Notary Public in and for Williamson County, Texas."

Order Approving Supersedeas Bond.

Filed June 19th, 1907.

24551.

THE STATE OF TEXAS

vs.

THE WATERS PIERCE OIL CO.

And now on this the 19th day of June, 1907, came the defendant by its attorneys and presented in open court their supercedeas bond in Receivership proceeding and the court having examined said bond and finds same in proper form and subscribed with sufficient sureties as required by law:

14 It is therefore ordered, adjudged and decreed by the court that the said supersedeas bond be and the same is hereby approved and the clerk is directed to file said bond and enter the same in the minutes of this court.

Defendant's Bill of Exceptions to Orders and Proceedings in Reference to Receivership.

Filed June 29th, 1907.

In the District Court of Travis County, Texas, 26th Judicial District, May Term, A. D. 1907.

No. 24551.

THE STATE OF TEXAS

v.

WATERS PIERCE OIL COMPANY.

Be it remembered that on the 22nd day of September, A. D. 1906, the State of Texas instituted suit by original petition filed in the

above court against the defendant, the Waters Pierce Oil Company, in which petition and for cause of action against the defendant, the plaintiff alleged that defendant had on each and every day from June 1st, 1900, down to and including the 31st day of March, 1903, in each and every county in the State of Texas, committed acts in violation of chapter 146 of the Acts of the Twenty-sixth Legislature, known as the Anti-trust law of 1899, and being entitled "An Act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; and to provent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that vi*o*ates the terms of this act, and to authorize the institution of prosecutions and suits therefor"; and that said defendant had in each and every county in the State of Texas, and on each and every day from the 1st day of April, 1903, to the filing of said suit committed acts in violation of chapter 94 of the acts of the Twenty-eighth Legislature of the State of Texas, known as the Anti-trust law of 1903, and being entitled, "An Act to define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade; to prescribe penalties for forming or being connected with such trusts, monopolies and conspiracies; and to provide for the suppression of the same and to promote free competition in the State of Texas; and to repeal all laws in conflict therewith". and in said petition the plaintiff sued for the maximum penalty provided in each of said statutes, and for the aggregate sum of $5,228,400.00.

That after the filing of said petition the defendant was duly served with citation, filed its answer to the October Term of said Court, A. D. 1906, and thereafter said cause was continued at said October Term, and likewise at the March Term of said Court, A. D. 1907, and the pleadings of both parties having been amended the State filed its Second Amended original petition by leave of the court, in which the plaintiff alleged that defendant had in each and every county and on each and every day from the 1st day of June, A. D. 1900, down to the 29th day of April, 1907, committed acts in violation of each of the two anti-trust statutes above set out, and in said amended petition the State continued to claim the maximum penalty provided in each of said statutes.

In said original petition and in the said second amended original petition the State alleged that the defendant was a foreign corporation chartered under the laws of the State of Missouri, and had during the period aforesaid, been engaged in transacting business in the State of Texas under a permit granted to the defendant by the Secretary of State of the State of Texas on May 31st, 1900, and in said second amended original petition the said State of Texas prayed for relief as follows:

"Plaintiff prays that it have judgment cancelling the permit issued to defendant on the 31st day of May, 1900, and for an injunction restraining it from doing business within this State, and that it have judgment for the sum of $2,239,000.00, penalties, and it prays for costs and general relief."

And be it further remembered that in its answer to the said last named petition filed by the State, the defendant, among other things,

denied all and singular the allegations contained in said petition and plead not guilty to the offenses therein charged against it, and upon said petition and said answer a trial was had before said court
16 and a jury duly impannelled, beginning on the 20th day of May, A. D. 1907, and concluding on the 1st day of June, A. D. 1907, when the jury returned a verdict in favor of the plaintiff and the court rendered judgment thereon in words and figures as follows:

"24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

And now on this 20th day of May, 1907, the above cause coming on for trial, both parties appeared by Attorneys, and announced ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impannelled and sworn to try the case, and thereafter the case proceeded to trial, when, by agreement of all parties on the 24th day of May, 1907, one of the jurors, Aaron Davis, theretofore selected, was excused on account of sickness, which disabled him from acting as a juror in the cause, and the trial then proceeded before the court and the eleven jurors theretofore duly selected and sworn, and the case continued on trial from day to day, and after all the pleadings and evidence and argument of counsel had been submitted to the jury, and after being duly charged by the court, the jury retired in the custody of the proper officer to consider of their verdict, and thereafter on the 1st day of June, 1907, they returned in*o*t open court the following verdict:

"AUSTIN, TEXAS, *June* 1, 1907.

"We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties $1,549,500.00 dollars.

"And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty days and fix the penalties at seventy four thousand four hundred dollars.

"We further Find that the permit of the defendant to do business in the State of Texas should be cancelled.

"We find for the defendant upon all issues made by the pleadings and not submitted in the charge of the court.

W. T. HART, *Foreman.*
W. J. CRISWELL.
C. A. BERGSTROM.
J. C. BRODIE.
L. B. STUBBS.
W. W. CHILDRESS.
W. T. THOMPSON.
17 H. E. TOWNSEND.
J. C. GRINDSTAFF.
EARNEST GOWER.
CHAS. KROHN.

which verdict was by the court received, ordered filed and made a part of the record of this cause.

"It is therefore considered, ordered, adjudged and decreed that the plaintiff, the State of Texas, do have and recover of and from the defendant, the Waters Pierce Oil Company, a corporation, the sum of $1,623,900.00) One Million, Six Hundred and Twenty-Three Thousand Nine Hundred Dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue;

"It is further ordered, adjudged and decreed that the permit of the defendant, the Waters Pierce Oil Company, to do business in the State of Texas, be, an the same is, hereby cancelled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas."

And be it further remembered that upon said 1st day of June, A. D. 1907, the defendant filed with the clerk of said court its motion to set aside the verdict of the jury aforesaid and the judgment thereon rendered, and to grant it a new trial.

And be it further remembered that after the filing of the motion aforesaid, the plaintiff, the State of Texas, through its attorneys, presented to the Honorable V. L. Brooks, Judge of this court, its application for the appointment of a receiver and upon the application the said Judge of this court endorsed his fiat, and said application and fiat was thereupon, on said 1st day of June, A. D. 1907, filed with the Clerk of this court, and the same is in words and figures as follows:

In the District Court, Travis County, Texas, Twenty-sixth Judicial District.

No. 24551.

STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY, Defendant.

To the Honorable V. L. Brooks, Judge of said Court:

18 And now comes the State of Texas, acting by and through her Attorney General, and the County Attorney of Travis County, Texas, acting under the direction and supervision of the said Attorney General, and shows to the court:

First. That on the 1st day of June, 1907, in this court in the above entitled and numbered cause, a judgment was rendered in favor of the State of Texas against the defendant, The Waters Pierce Oil Company, for the sum of One Million, Six Hundred Twenty-Three Thousand, Nine Hundred ($1,623,900.00) Dollars, and said judgment further providing for the cancellation of the

permit of the said defendant to do business in the State of Texas; that said cause of action and said judgment was based upon alleged violation of the Anti-trust law of the State of Texas.

Second. That in a certain suit pending in the State of Missouri, wherein the State of Missouri is plaintiff, and the said above named defendant, the Waters Pierce Oil Company, among others, is defendant, a suit was instituted for the forfeiture of the charter of said defendant, Waters Pierce Oil Company and prohibiting it doing business in said State, said suit being instituted in the Supreme Court of the State of Missouri; that in pursuance to law the said Supreme Court of the State of Missouri appointed a commissioner to hear testimony and make his report and findings of fact, and recommendation of law thereon; that after hearing the testimony, the said commissioner found in favor of the State of Missouri on all issues in said case, recommended to the said Supreme Court of Missouri that the charter of the said Waters Pierce Oil Company be cancelled; that plaintiff is informed and believes that said recommendations have the force and effect of a judgment forfeiting the charter of the said defendant, Waters Pierce Oil Company.

Third. That the penalties recovered in this cause by plaintiff, the State of Texas, cannot be collected outside of the State of Texas, and the property of the defendant situated in the State of Texas, as the plaintiff is informed and believes, is wholly inadequate to pay the above mentioned judgment; that the great bulk of the property within the State of Texas belonging to the defendant, subject to the payment of the said judgment, consists of current accounts with merchants and dealers in the State of Texas, of tank cars, of
19 money on hand, of oil that is easily removed, and property of that kind and character, practically the whole of it being personal, movable, property and if carried beyond the limits of this State cannot be pursued by the State of Texas, and the State would have no way of collecting the above mentioned judgment; that under and by virtue of an act of the Legislature of the State of Texas, approved April 11, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment.

Fourth. That under the judgment of ouster rendered in this cause, the defendant has no right to do business in this State and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State.

Wherefore plaintiff requests the court to appoint a receiver to take charge of all the property and assets of every kind, character and description of the defendant situated within the State of Texas, pending the hearing of this application; that this court grant its most gracious writ of injunction, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of

them, from removing from the State of Texas any part of the property or assets of said defendant situated within the State of Texas.

R. V. DAVIDSON.
Attorney General.
JEWEL P. LIGHTFOOT,
Ass't Attorney General.
JNO. W. BRADY,
County Attorney, Travis Co., Tex.
GREGORY & BATTS,
ALLEN & HART,
Attorneys for the Texas *of Tex.*

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day per-
20 sonally appeared Jno. W. Brady, County Attorney of Travis County, Texas, who after being by me duly sworn on his oath, says that the facts stated in the foregoing application are true, except where stated upon information and belief, and where so stated he verily believes them to be true.

JNO. W. BRADY.

Sworn to and subscribed before me on this the 1st day of June, A. D. 1907.

[SEAL.]

ROSE LITTMAN,
Notary Public, Travis Co., Tex.

AUSTIN, TEXAS, *June* 1, 1907.

In Chambers.

The above application for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, being presented to me, it is hereby set down for hearing on the 8th day of June, 1907, at 10 o'clock A. M., at the Court House in Travis County, Texas and the Clerk will issue a notice to the defendant accordingly. Upon consideration, the application for a temporary injunction pending the hearing of said application is hereby granted, and the Clerk of this court is instructed to issue such temporary injunction under his hand and the seal of court, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them, from removing beyond the State of Texas any of the property or assets of the defendant until the further orders of this court.

V. L. BROOKS,
Judge 26th Judicial District of Texas.

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Application for a receiver. Filed June 1st 1907. D. J. Pickle, Clerk, By J. A. Belger, Deputy.

And be it further remembered that on Friday, June 7th, 1907, defendant's motion for a new trial was taken up, argued and
21 considered by the court and on said day was overruled, to which action and ruling the defendant in open court excepted, and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas; and said defendant thereupon, on said June 7th, 1907, tendered and placed in the hands of D. J. Pickle, the Clerk of said Court, an appeal bond with the American Surety Company of New York as its sole surety, which said bond is in words and figures as follows:

"THE STATE OF TEXAS, *County of Travis:*

"Whereas, in a certain cause pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas was plaintiff and the Waters Pierce Oil Company was defendant, and numbered 24,551 on the docket of said court, a judgment was on June 1st, 1907, rendered by said court in favor of the plaintiff, the State of Texas, and against the defendant, The Waters Pierce Oil Company, for the sum of One Million, Six Hundred and twenty-three thousand, and nine hundred ($1,623,900.00) Dollars, and for costs of suit, and cancelling the permit of said defendant, the Waters Pierce Oil Company, to do business in the State of Texas; and, whereas, said defendant, the Waters Pierce Oil Company, has appealed from said judgment to the Court of Civil Appeals of the Third Supreme Judicial District of Texas, and desires to suspend the execution of such judgment pending such appeal;

Now, Therefore, know all men by these presents, that we, the said Waters Pierce Oil Company, as principal and —— American Surety Company of New York, as surety, do hereby acknowledge ourselves bound to pay to the State of Texas the sum of Three Million and Two hundred and Seventy-five Thousand ($3,275,000.00) Dollars, conditioned that said Waters Pierce Oil Company shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence, or decree, and pay all such
22 damages as said court may award against it.

" Witness our hands this 7th day of June, A. D. 1907.

WATERS PIERCE OIL COMPANY,
By R. L. PENN, *Att'y in Fact.*
AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY, *Res. Vice President,*
[L. S.] By W. T. DECHARD, *Res. Ass't Secretary.*"

And be it further remembered that on Saturday, June 8th, 1907, at 10:00 o'clock A. M. and in open court the Honorable V. L. Brooks, Judge, announced that the time for consideration of the application for the appointment of a receiver, above copied, had been reached, and the same was then called for consideration, whereupon, the defendant by its attorneys, stated that before considering said application they desired to call the attention of the

court to the fact that they had tendered their supersedeas appeal bond, above copied and that they desired to know the action of the Clerk as to whether he would approve or reject said bond, and thereupon, said Clerk, by written motion, requested instructions or advice from the court as to whether said bond was legally sufficient and as to whether he was authorized to approve the same with the said single surety thereon, and thereupon the court stated that before considering said application for a receiver he would consider the Clerk's request for advice, without assuming to have any power to dictate or control his action in approving or rejecting said bond, and after argument by counsel for the State and defendant as to the sufficiency of said bond because of the admitted fact on the part of defendant that said American Surety Company of New York was a bonding Company chartered under the laws of another State and only had as assets within this State the $50,000.00 required to be deposited with the State Treasurer, as required by Article 734 of the Revised Statutes of the State of Texas, and after the said Judge gave advice to the said Clerk and without directing him to approve or reject said bond, the Clerk made known his refusal to accept said bond, and thereupon the defendant, by its counsel, requested a postponement of the further consideration of said application for
23 a receiver for a period of two weeks to allow it a reasonable time to procure other sureties and to give a supersedeas bond in connection with its appeal from the judgment rendered against it, and after full argument by both parties upon said application for postponement and the propriety and authority of the court to appoint a Receiver, the Court announced that he would take the matter under advisement until 10:00 o'clock on Monday morning, June 10th, 1907.

And be it further remembered that on said June 10th, 1907, at the hour of 10:00 o'clock A. M. the court announced its ruling refusing to grant the postponement of the consideration of said application for a receiver and again called the same for consideration and action, and thereupon, defendant, by its counsel, read its answer and response to said application, same being in words and figures as follows:

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

Now comes the defendant in the above entitled and numbered cause by its attorneys, and excepts to the application filed by the plaintiff herein on June 1st, 1907, for the appointment of a receiver of the property and assets of this defendant, and says that said application is insufficient in law, and shows no sufficient cause for the

appointment of such receiver, and of this defendant prays judgment of the Court.

CLARK & BOLINGER,
COCHRAN & PENN,
W. W. ODELL,
N. A. STEDMAN,
Attorneys for Def't.

And for further answer to said application and for the purpose of replying to the portion thereof relating to the said suit pending in the State of Missouri, defendant says that it is not true,
24 as stated in said application, that the recommendation of said commissioner have the force and effect of a judgment forfeiting the charter of this defendant, but, on the contrary, no judgment has been rendered in said cause in said Supreme Court of Missouri, and said report of said Commissioner does not have the effect of a judgment, but that said report and recommendations of said commissioner may be either approved or rejected by said Supreme Court of Missouri, and will have no force or effect unless confirmed and approved by said Supreme Court of Missouri.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Att'ys for Def't.

Before me, the undersigned officer, on this day personally appeared D. W. Odell and R. L. Penn, who each being by me duly sworn on oath deposes and says: that he is one of the attorneys for defendant in the above entitled and numbered cause, and that the facts stated in the foregoing special plea are true as he is informed and verily believes.

(Signed) D. W. ODELL.
R. L. PENN.

Subscribed and sworn to before me by D. W. Odell and R. L. Penn, this 10th day of June, A. D. 1907.

D. J. PICKLE,
Clerk District Court of Travis County, Texas.
[L. S.] By E. HUPPERTZ,
Deputy.

And be it further remembered that after reading the foregoing answer and response, counsel for defendant proceeded to argue its said general exception or demurrer to the said application for the appointment of a receiver, and at the conclusion of such argument when counsel for the State started to argue the same, the Court announced that it was unnecessary for counsel for the State to make any further argument, and the Court thereupon proceeded to announce his conclusions with respect to said application and defendant's objections thereto, and stated that the Court would take judi-

cial notice of the proceedings in the main case and of the
25 rendition of judgment against the defendant for violating the anti-trust laws of the State, as charged against it in plaintiff's said second amended original petition, and that it had been found guilty of violating the said anti-trust laws on each and every day from the 1st day of June, 1900, to the 29th day of April, 1907, and that its permit to do further business in the State had been forfeited and cancelled by reason of said violations, and that defendant had since May 31st, 1900, *had* been a member of an agreement which had its very existence in Texas, in violation of the Civil and Criminal laws of Texas, and that it had been and still is in possession of certain instrumentalities by means of which it, in violation of the public welfare and interests, intended to continue its violation of the law pending appeal from the judgment of conviction, and that the Court would assume that the defendant would fine its proper supersedeas bond from the said judgment of conviction, but that notwithstanding defendant's right to so file said supersedeas bond within the time provided by law, the Court was of the opinion that the Legislature had provided as a remedy or means of preventing defendant from the continued violation of the law, that a receiver should be appointed to take charge of its property and business and deprive it of the instrumentalities by which it had so violated the law, and would continue to violate the law; and that because of said Statute and of the declared purpose of defendant, speaking through its general counsel, John D. Johnson, in newspaper interviews which had been brought to the attention of the court, in which said Johnson had discussed the effect of the aforesaid judgment of conviction against defendant. and had declared the purpose of defendant to appeal from said judgment of conviction and to continue to carry on its business in the same manner that it had theretofore done, notwithstanding such judgment of conviction; and without any evidence being submitted to the court in connection with said application, the court thereupon announced that it would grant said application and appoint a receiver as therein prayed for, and that the court had made up its mind as to the gentleman so to be appointed receiver, and would invite counsel for the State and for defendant to his room, where he would disclose the name of the gentleman so determined upon, and give to counsel
for both sides an opportunity to present any objections which
26 they might have to the gentleman so determined upon, to which action of the court, and before the Judge left the bench and retired to his room for the conference aforesaid, the defendant, by its attorneys, in open court, then and there excepted and gave notice of appeal from the action of the court to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, and thereupon the court caused an order to be prepared and entered of record evidencing its action in granting the application of the State of Texas for the appointment of a receiver aforesaid, which said order is in words and figures as follows:

"24551.

THE STATE OF TEXAS
v.
WATERS PI-RCE OIL COMPANY.

"And now on this the 10th day of June, 1907, at a regular term of this court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business and supplying oil to the public in the State of Texas; that the temporary injunction heretofore granted, prohibiting defendant from moving any of its property and assets beyond the limits of the State of Texas be, and the same is hereby continued in force until the further orders of this court.

"To all of which action the defendant in open court excepts, and in open court give- notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas."

And be it further remembered that after the proceedings aforesaid had taken place in the manner above recited, the Honorable V. L. Brooks, Judge of said Court, did announce that he
27 had determined upon the selection of Robert J. Eckhardt to be receiver, and was willing to hear any objections that might be urged against his appointment, and, at the request of defendant's counsel, the matter of the final order naming the said Eckhardt as receiver was postponed until June 13th, 1907, and on said last mentioned date the court, did make its order naming said Robert J. Eckhardt as receiver, and caused the same to be entered of record in words and figures as follows:

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

"On this the 10th day of June, A. D. 1907, in this cause an order was made and entered by this court granting the application of the plaintiff, the State of Texas, for the appointment of a receiver herein, and the court at the time of the making of said order naming

as receiver Robert J. Eckhardt and time being given both parties to urge any objection they might have to said Eckhardt as such receiver, and no objection having been made to said Eckhardt, the court now on this 13th day of June 1907, confirming said order and in pursuance thereof names and appoints as receiver herein of the property in said order described said Robert J. Eckhardt with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two Hundred and Fifty Thousand Dollars;

"And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin."

To which action of the court at the time said order was entered defendant excepted and again gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

And be it further remembered that thereafter on the 15th day of June, A. D. 1907, the defendant having tendered to the Clerk of this court another supersedèas appeal bond from the main judgment rendered against it on June 1st 1907, with the American Surety Company of New York and John H. Kirby as its sureties thereon, and before the approval of said bond, as hereinafter recited, the court caused the following amendment to the above recited
28 orders of June 10th and June 13th 1907, to be entered, which said order directing said amendment of said order was made over the objections of the defendant, and to the action of the court in so amending said orders defendant then and there excepted and again gave notice of Appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, which said amendment is in words and figures as follows:

In District Court, Travis County, Texas, June 15th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this 15th day of June, A. D. 1907, at a regular term of this court, it is considered, ordered, adjudged and decreed by the court that the orders of this court made and entered in said cause on the 10th day of June, A. D. 1907, and the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

And now on this 10th day of June 1907, at a regular term of this court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property

and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the Public in the State of Texas, with the rights, power, and authority to continue the various clerks, servants and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion and to require such bonds and security to himself as Receiver from any of the present employees as he may think
29 expedient and proper; and to sell the present stock of oil and other products and personal property in the hands of the defendant and which may come into his hands as receiver and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business so that said business may be kept up to its present condition as near as may be; and the said receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally to do such acts respecting the property as the Court may authorize and all the expenses of said receivership including taxes, insurance premiums, attorney's fees, his own compensation and all expenses of said receivership to be paid as a part of the Court costs of the suit. That the temporary injunction heretofore granted, prohibiting the defendant from removing any of its property and assets beyond the limits of the State of Texas, be, and the same, is hereby continued in force until the further orders of this court;

To all of which action the defendant in open court excepts, and in open court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

And on this 13th day of June, A. D. 1907, the Court confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described, Robert J. Eckhardt, who is a resident citizen of the County of Williamson, in the State of Texas, with the duties and powers therein named, and fixes the amount of his bond as such Receiver at ($250,000.00) Two Hundred and Fifty Thousand Dollars, to be made payable to the Judge of this court, and his successors in office, for the use of all parties interested in said property and this suit.

And defendant renewed its exceptions to the apointment of a receiver and gives notice of appeal from the order appointing a

receiver to the Court of Civil Appeals for the Third Supreme
30 Judicial District of Texas, at Austin.

And be it further remembered that after the entry of said amended orders aforesaid, the Clerk of this Court, duly approved and filed defendant's said supersedeas appeal bond last above mentioned, and the same is in words and figures as follows:

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Know all men by these presents:

That, Whereas, in the above entitled and numbered cause in the District Court of Travis County, State of Texas, twenty-sixth Judicial District, a judgment was rendered in behalf of the plaintiff, the State of Texas, against the defendant, the Waters Pierce Oil Company, in words and figures as follows, towit:

In District Court, Travis County, Texas, June 1st, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

And now on this the 20th day of May, 1907, the above cause coming on for trial, both parties appeared by attorneys, and announced ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impaneled and sworn to try the case, and thereafter the case proceeded to trial, when by agreement of all parties on the 24th day of May, 1907, one of the Jurors, Aaron Davis, theretofore selected, was excused on account of sickness, which disabled him from acting as a juror in the cause, and the trial then proceeded before the court and the eleven jurors theretofore duly selected and sworn, and the case continued on trial from day to day, and after all the pleadings, evidence and argument of counsel had been submitted to the jury, and after being duly charged by the court, the jury retired in the custody of the proper officer to consider of their verdict, and ther-after on the 1st day of June, 1907, they returned into open court the following verdict:

AUSTIN, TEXAS, *June* 1, 1907.

"We the jury find for the plaintiff against the defendant
31 on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties 1,549,500.00 dollars.

And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty-eight days and fix the penalties at seventy-four thousand four hundred dollars.

We further find that the permit of the defendant to do business in the State of Texas should be canceled.

We find for the defendant upon all issues made by the pleadings and not submitted in the charge of the court.

W. T. HART, *Foreman.*
W. J. CRISWELL.
G. A. BERGSTROM.
J. C. BRODIE.
L. B. STUBBS.
W. W. CHILDRESS.
W. T. THOMPSON.
H. E. TOWNSEND.
J. C. GRINDSTAFF.
EARNEST GOWER.
CHAS. KROHN."

which verdict was by the court received, ordered filed and made a part of the record of this cause.

It is, Therefore, considered, ordered, adjudged and decreed that the plaintiff, the State of Texas, do have and recover of and from the defendant, The Waters Pierce Oil Company, a corporation, the sum of ($1,623,900.00) One Million, Six Hundred and twenty-three thousand nine hundred dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue;

It is further ordered, adjudged and decreed that the permit of the defendant, The Waters Pierce Oil Company, to do business in the State of Texas, be and the same is, hereby canceled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing is a true and correct copy of the judgment in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as same appears of
32 record in Minute Book 12, page 349 *et seq.*, of the records of this office.

Given under my hand and seal of office, at Austin, Texas, this the 14th day of June, A. D. 1907.

[SEAL.]

D. J. PICKLE,
Clerk District Court, Travis County, Texas,
By J. A. BELGER, *Deputy.*

And, whereas, the defendant in said cause duly filed its motion for a new trial, which said motion was by the court overruled and refused by order and judgment entered on the 7th day of June, A. D. 1907, and the said defendant then and there in open court excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

And, whereas, the defendant desires to perfect its said appeal and supersede the judgment aforesaid pending its said appeal;

Now, Therefore, we, the said Waters Pierce Oil Company, defendant aforesaid, and appellant, as principal, and the American Surety Company of New York, a corporation duly qualified and authorized to execute this bond, as surety, together with Jno. H. Kirby, as further surety herein, do hereby each acknowledge ourselves indebted, held and firmly bound to pay to the State of Texas, plaintiff aforesaid and appellee herein, the full sum of Three Million, Two Hundred and seventy-five Thousand ($3,275,000.00) Dollars, conditioned that the said appellant, the Waters Pierce Oil Company, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree, and pay all such damages as said court may award against it.

In witness of all of which the said Waters Pierce Oil Company causes this bond to be executed by T. B. Cochran, its agent and attorney at law and in fact, and the said The American Surety Company of New York, causes this bond to be executed by J. E. Lucy, its Resident Vice President and duly appointed agent and attorney in fact, and the said Jno. H. Kirby, execute- the same in his own proper person, this the 15th day of June, A. D. 1907.

THE WATERS PIERCE OIL COMPANY,
By T. B. COCHRAN,
33 *Attorney at Law and in Fact.*
[SEAL.] THE AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY,
Resident Vice President and Agent.

Attest:
W. T. DECHARD,
Resident Assistant Secretary.

JNO. H. KIRBY.

Approved June 15, 1907,
D. J. PICKLE, *Clerk.*

(Endorsed:) No. 24551. The State of Texas *vs.* Waters Pierce Oil Co. Appeal Bond No. 1. Filed June 15, 1907. D. J. Pickle, Clerk.

Be it further remembered that on June 15th, 1907, the court made and entered its order fixing the amount of bond which defendant was required to give in order to perfect its said appeal from the orders appointing a receiver and supersede the said orders so

appointing a receiver at the sum of $100,000.; and thereupon, defendant tendered and placed in the hands of the Court its supersedeas appeal bond in said sum last named, with the American Surety Company of New York and John H. Kirby as its sureties, and the Court having announced its refusal to consider said bond at said time and its purpose to postpone the further consideration thereof until the succeeding Wednesday morning, June 19, 1907, at 10:00 o'clock, defendant at the time of such refusal to consider said bond and the postponement thereof excepted to the action of the Court.

Be it further remembered that on said 19th of June, 1907, at the hour of 10:00 o'clock, the court having announced that it would consider the matter of the approval of the receiver's bond of Robert J. Eckhardt, receiver, which had been tendered to him on the — day of June, A. D. 1907, and would also consider the matter of the approval of defendant's said supersedeas appeal bond so tendered to him on June 15th, 1907, the defendant in open Court objected to the consideration and approval of the receiver's bond before acting upon its appeal bond, which had been first placed with the Court, and for the additional reason that as defendant had duly filed with the Clerk of this Court its said supersedeas appeal bond from the main judgment of June 1st, 1907, the Court was
34 without authority or jurisdiction to make any further orders with respect to said receivership or to approve said receiver's bond, which said objection was then and there overruled and defendant in open court excepted, and thereupon the court proceeded and first entered its order of approval of the said receiver's bond, and, after so approving the same, did enter its order approving defendant's said supersedeas appeal bond so placed with the Court on June 15th, 1907, to which action of the court at the time defendant excepted; and defendant having announced to the court its desire to submit this said last mentioned supersedeas appeal bond to the Clerk for his approval, the court directed the Clerk to first consider the bond of the receiver before approving defendant's said bond, to which action of the Court in so directing the Clerk defendant excepted.

And defendant now tenders this its bill of exceptions to all matters connected with the appointment of a receiver, as hereinbefore recited, and prays that this bill be signed and orders filed as part of the record in this proceeding.

Examined and allowed:

V. L. BROOKS,
Judge, 26th Judicial District.

(Endorsed:) No. 24551. The State of Texas *vs.* Waters-Pierce Oil Co. Defendant's Bill of Exceptions to Orders and Proceedings *to Orders and Proceedings* in reference to Receivership. Filed June 29th, 1907. D. J. Pickle, Clerk.

35 *Appeal Bond — In Receivership.*

Filed June 15th, 1907.

In the District Court of Travis County, State of Texas, Twenty-sixth District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Know all men by these presents that, whereas in the above entitled case in the District Court of Travis County, State of Texas, Twenty-sixth Judicial District, before the Hon. V. L. Brooks, Judge presiding, the following orders, judgments and proceedings were had and duly entered of record, namely:

In District Court, Travis County, Texas, June 10th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

And now on this the 10th day of June, 1907, at a regular term of this Court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this Court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the Court may direct, keeping and preserving the property coming into his custody and carrying
36 on the business of marketing and supplying oil to the public in the State of Texas; that the temporary injunction, heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be, and the same is hereby continued in force until the further orders of this Court.

To all of which action the defendant in open Court excepts, and in open Court give- notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

In District Court, Travis County, Texas, June 13th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

On this the 10th day of June, A. D. 1907, in this cause an order was made and entered by this Court granting the application of the plaintiff, the State of Texas, for the appointment of a receiver herein, the Court at the time of the making of said order naming as receiver Robert J. Eckhardt and time being given both parties to urge any objection they might have to *to* said Eckhardt as such receiver, and no objection having been made to said Eckhardt, the Court now on this 13th day of June, 1907, confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described said Robert J. Eckhardt with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two hundred and fifty thousand dollars;

And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court, within and for the County and State aforesaid, do hereby certify that the within
37 and foregoing is a true and correct copy of Orders of Court appointing Receiver in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as the same appear of record in this office.

Given under my hand and seal of office, at Austin, Texas, this the 13th day of June, A. D. 1907.

[SEAL.]

D. J. PICKLE,
Clerk District Court, Travis County, Texas.

And Whereas, the said defendant, Waters Pierce Oil Company, havin*f* duly excepted to the action of the Court in making said orders and judgments, and given notice of appeal therefrom to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, and the said V. L. Brooks, Judge presiding, having fixed the amount of the appeal bond required to be given by said Waters Pierce Oil Company at the sum of One Hundred Thousand Dollars, and said Company desiring to perfect its said appeal and supersede and suspend said orders and judgments as provided by law;

Now, therefore, we, the said Waters Pierce Oil Company, appellant, as principal, and the American Surety Company of New York and Jno. H. Kirby, as sureties, do hereby acknowledge ourselves in-

debted, held and firmly bound to pay to the State of Texas, appellee the full sum of One Hundred Thousand Dollars, conditioned that the said Waters Pierce Oil Company, appellant, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree and pay all such damages as said Court may award against it, and further conditioned that the said Waters Pierce Oil Company, appellant, shall, in case judgment is affirmed, pay to the State of Texas, appellee, the value of the rent or hire of all such property embraced in the orders and judgments aforesaid in any suit which may be brought therefor.

In witness of all which the said Waters Pierce Oil Company
38 causes this bond to be executed by T. B. Cochran, its agent and attorney at law and in fact, and the said The American Surety Company of New York causes this bond to be executed by J. E. Lucy, its Resident Vice President and duly appointed agent and attorney in fact, and said Jno. H. Kirby execute the same in *their* own proper person, this the 15th day of June, A. D. 1907.

THE WATERS PIERCE OIL COMPANY,
By T. B. COCHRAN, *Agent,*
Attorney at Law and in Fact.

[SEAL.] THE AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY,
Resident Vice-President and Agent.

Attest:
W. T. DECHERD,
Resident Assistant Secretary.

JNO. H. KIRBY.

Examined, approved and ordered filed by the undersigned this 19th day of June, 1907, at 10:30 o'clock A. M.

V. L. BROOKS, *Judge.*

Approved June 19, 1907, 10:36 A. M.

D. J. PICKLE, *Clerk.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Appeal Bond No. 2. Filed June 19, 1907. D. J. Pickle, Clerk.

39 *Assignment of Errors in Receivership Proceeding.*

Filed July 10, 1907.

In the Twenty-Sixth Judicial District Court of Travis County, Texas.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

In the above entitled cause, now comes the defendant, and files the following assignments of error to the different rulings, orders and judgments of the said Court appointing Robert J. Eckhardt receiver of the property of this defendant, to-wit:

I.

The Court erred in overruling defendant's general exception to the motion or application of the State for the appointment of a receiver.

II.

As the judgment recovered by the State of Texas against defendant on June 1st, 1907, was a personal judgment and did not attempt to foreclose the lien claimed upon defendant's property in the State, the Court was without jurisdiction by motion filed in the same cause to appoint a receiver, and erred in considering the same and in appointing the said Eckhardt receiver upon said motion.

III.

The Court erred in overruling defendant's request for a postponement of action upon the said application until defendant should have a reasonable time to file a supersedeas bond in con-
40 nection with its appeal from the main judgment rendered against it on June 1st, 1907.

IV.

The Court erred in making its order granting the application of the State of Texas for the appointment of a receiver of defendant's property by its order entered on June 10th, 1907.

V.

The Court erred in making and appointing Robert J. Eckhardt to be the receiver of defendant's property by its order entered on June 13th, 1907.

VI.

The Court erred in refusing to consider and approve defendant's supersedeas bond in the sum of One Hundred Thousand Dollars

($100,000.00) tendered on June 15th, 1907, and in withholding its approval thereof until after the bond of the said Robert J. Eckhardt as receiver was tendered and approved on June 19th, 1907.

VII.

When defendant's appeal bond was approved and filed on June 15th, 1907, superseding the judgment recovered against it by the State of Texas on June 1st, 1907, in the main cause, the appointment of said Robert J. Eckhardt as receiver, and all orders and proceedings there-fore had in connection with such appointment, were thereby vacated and became null and void, and the said Court erred in not entering a formal order recognizing the legal effect of the said supersedeas bond and vacating said appointment and setting aside all of its said orders, and in further considering said appointment as in force for any purpose.

VIII.

The Act of the Legislature of the State of Texas approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in so far as it
41 attempts to create a lien upon this defendant's property for acts committed before the said Act took effect, in violation of Sec. 16, Art. 1, of the Constitution of the State of Texas.

IX.

The Act of the Legislature of the State of Texas approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in that it attempts to create a lien upon this defendant's property for acts committed before said Act took effect, in violation of Section Ten of Article Two of the Constitution of the United States which denies to any State the right to pass an *ex post facto* law, and the Court erred in considering said Act as the basis of its orders appointing the said receiver.

X.

The said Act of the Legislature of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in so far as it authorizes the appointment of a receiver in a suit brought to recover a personal judgment in which no lien upon defendant's property was set up and adjudicated, and the action of the Court in appointing the said receiver in this cause was in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, in that it results in depriving defendant of its property without due process of law and in denying to defendant the equal protection of the law.

XI.

The said Act of the Legislature of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing the

said receiver, is unconstitutional, null and void, in so far as it authorizes the appointment of a receiver in a suit brought against a defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the court in appointing a receiver for defendant's property on that ground and for that purpose, as indicated
42 in the opinion of the Court at the time said appointment was made, was unauthorized in law, and in violation of Section 17 of Article One of the Constitution of the State of Texas.

XII.

The said Act of the Legislature of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void, in so far as it authorizes the appointment of a receiver in a suit brought against a defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the Court in appointing a receiver for defendant's property on that ground and for that purpose as indicated in the opinion of the Court at the time said appointment was made, was unauthorized in law, and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, in that the result of said action was and is to deprive the defendant of its property without due process of law and to deny to defendant the equal protection of the laws.

XII.

The Court erred in appointing the said receiver without any evidence being introduced before it at the time said appointment was made, to show that defendant did not intend to change its status and methods of doing business so as to conform to the laws of the State of Texas, and without affirmatively showing that defendant could not make use of its property and carry on its business in accordance with law, and in holding that the Court was authorized to so appoint a receiver for defendant's property in the State of Texas and deprive defendant of the instrumentalities by which it had been convicted of violation — the laws of said State, based upon its past conduct and the said judgment of conviction rendered against it on June 1st, 1907.

Wherefore, defendant says that the said action of the Court
43 was unauthorized and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, and has the effect of depriving defendant of its property without due process of law, and in denying to it the equal protection of the laws.

XIV.

The Court erred in disregarding the supersedeas bond filed by defendant in connection with its appeal from the main judgment

recovered against it on June 1st, 1907, and in requiring defendant to file the additional bond in the sum of One Hundred Thousand Dollars to supersede the orders appointing the said receiver and to avoid having to surrender its property to said receiver by reason of said appointment and this action on the part of the Court was without lawful warrant and in violation of section one of the Fourteenth Amendment to the Constitution of the United States, in that the effect of such action by the Court was to deprive the defendant of its property without due process of law and to deny to it the equal protection of the law.

Wherefore, and upon each of the foregoing errors committed by the said District Court, the defendant prays the reversal of the action of said Court in appointing the said Robert J. Eckhardt as receiver, and that all orders and proceedings had in connection therewith be vacated and held for naught, and for such other orders as may be necessary to correct the errors committed by the said District Court in the premises.

CLARK & BOLINGER,
COCHRAN & PENN,
N. A. STEDMAN,
D. W. ODELL,
Attorneys for Defendant.

(Endorsed:) No. 24551. The State of Texas *vs.* Waters Pierce Oil Co. Assignment of Errors in Receivership Proceedings. Filed July 10, 1907. D. J. Pickle, Clerk, by J. A. Belger, Deputy.

44 *Additional Assignments of Error in Receivership Proceedings.*

Filed August 7th, 1907.

In the District Court of Travis County, State of Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

In the above entitled and numbered cause, now comes the defendant and files the following additional assignments of error to the action of the Court in appointing Robert J. Eckhardt receiver of the property of defendant, to-wit:—

No. 15. The Act of the Legislature of the State of Texas, approved April 11th, 1907, being Chapter 87 of the General Laws of the State of Texas, passed by the Thirtieth Legislature at its Regular Session, in so far as it authorizes the appointment of a receiver of appellant's property in this suit or prosecution instituted against appellant prior to the passage of said Act and for offenses alleged

to have been committed prior to its passage, is unconstitutional, null and void, in that it violates the Tenth Section of Article One of the Constitution of the United States, which provides that no State shall pass a bill of attainder or an *ex post facto* law.

No. 16. The said Act of the Legislature of the State of Texas, approved April 11th, 1907, is unconstitutional, null and void, in so far as it attempts to create a lien upon appellant's property for the alleged violation of the anti-trust laws of said State, in that the lien is not created by the terms of the Act, based alone upon
45 the commission of the offense, but is left to be created by the action of the prosecuting officer in filing suit to recover the prescribed penalties. The Statute therefore does not prescribe a fixed and uniform rule of law, applicable to all persons alike, but is a delegation of the legislative power to officers of the executive department to create the lien, or not to create it, and to arbitrarily discriminate between persons at will, and the appointment of the receiver to take charge of appellant's property under this statute, results in depriving appellant of its property without due process of law, and in denying to it the equal protection of the law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, which provisions of the Constitution of the United States are here urged and relied upon by appellant as against the validity and application of said Act of the Legislature of the State of Texas to the matters involved in this case, and to the act of the Court in appointing the said receiver thereunder.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant.

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Additional Assignments Nos. 15 & 16 in Receivership Proceedings. Filed Aug. 7th, 1907. D. J. Pickle, Clerk.

46 *Bill of Costs.*

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

To Officers of Court, Dr.

Clerk:
Transcript in Receivership Proceedings.....$33.00

47 *Clerk's Certificate.*

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court, within and for the County and State aforesaid, do hereby certify that the within and foregoing on 60 pages is a true and correct Transcript of all proceedings had in this Court in regard to Receivership Proceedings, in cause No. 24,551, The State of Texas *vs.* Waters-Pierce Oil Company, as the same appear on file and record in this office.

Given under my hand and seal of office, at Austin, Texas, this the 13th day of August, A. D. 1907.

[SEAL.] D. J. PICKLE,
Clerk District Court, Travis County, Texas.

48 (Transcript Cover:) No. 4213. Waters Pierce Oil Co. (Receivership Proceedings) Appellant *vs.* The State of Texas, Appellee. From the District Court of Travis County, for the 26th Judicial District of Texas, at Austin, Texas. Filed in Court of Civil Appeals, 3rd Judicial District, Austin, Texas, Sep. 10, 1907, R. H. Connerly, Clerk. Applied for by Cochran & Penn, Attorney- for Appellant on the 19th day of June A. D. 1907, and delivered to the above named attorneys on the 14th day of August 1907. D. J. Pickle, Clerk of the District Court of Travis County. Affirmed 10-23-'07. Overruled 12-11-'07.

49 *Opinion of Court of Civil Appeals.*

Filed June 28th, 1907.

No. 4179.

WATERS-PIERCE OIL COMPANY
vs.
THE STATE OF TEXAS.

On June 21st, 1907, the State of Texas, a party to the above styled cause, through and by its Attorney General and the County Attorney of Travis County and Robert J. Eckhardt, receiver of the property of the Waters-Pierce Oil Company, presented to this Court an application on behalf of the State and the receiver, stating substantially that on the 22nd day of September, 1906, the State instituted in the District Court of Travis County, Texas, a suit against the Waters-Pierce Oil Company, a corporation organized under the laws of Missouri, and exercising and carrying on its business in this State under a permit so to do. The purpose and object of the suit was to recover of the Oil Company penalties and to cancel its permit to do business in the State on account of the violation of certain provisions of the Anti-trust laws of this State. That the case, upon issues joined, came on for the trial on the 20th day of May 1907, and terminated on June 1st, 1907, with a verdict and judgment in

favor of the State against the defendant for the sum of $1,623,900, and cancelling the permit of the defendant to carry on and conduct its business within this State. That on the first day of June 1907, after the return of the verdict and the entry of the judgment, the State presented to the judge of the court where the case was pending an application for the appointment of a receiver of the property and assets and business of the defendant corporation within the State of Texas, which application was set down for hearing on the
50 8th day of June, 1907. In that application the State also requested an injunction restraining the defendant from removing any of its property from the limits of the State of Texas; and also stating in the application that the State, by virtue of a recent act of the Legislature, had a lien upon all of the properties and assets of the defendant Company for the satisfaction of the judgment that the court had rendered.

At the same time the court, upon application therefor, issued a temporary restraining order to the effect prohibiting the defendant, its agents, officers and attorneys, from removing beyond the State any of the assets of the defendant corporation, which order, by subsequent decree, was kept alive and was not superseded by the appeal. Upon this application for receiver and injunction, etc. notice was issued and served on the defendant on the first day of June, 1907. The matter coming on for hearing on the 8th day of June, the court passed the same until the 10th day of June, when upon that day he announced that he would appoint a receiver, as requested, but would for forty-eight hours defer naming the person to be so appointed, in order to give the parties through their respective counsel opportunity to make any objections they so desired to Robert J. Eckhardt, otherwise, at the end of that time, Eckhardt would be appointed. Thereafter, on the 13th day of June, 1907, no objections being made, the court entered an order confirming the order of June 10th, providing for the appointment of a receiver, and named and appointed Eckhardt receiver of all of the property and assets of the defendant Waters-Pierce Oil Company within this State, or that may thereafter come within the State; and further provided that the temporary injunction previously granted should continue in force. On June 15th, the court, by amended order, specifically and more largely defined the duties of the receiver, but in no wise affected his power and authority to take possession of the property of the defendant Company. The amended order is as follows:

"In District Court, Travis County, Texas, June 15th, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

51 "And now on this 15th day of June, A. D. 1907 at a regular term of this Court,

"It is considered, ordered, adjudged and decreed by the court that

the orders of this court made and entered in said cause on the 10th day of June, A. D. 1907, and the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

"And now on this 10th day of June, 1907, at a regular term of this Court there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters-Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property and assets of the defendant, the Waters-Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas, with the right, power and authority to continue the various clerks, servants and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion and to require such bonds and security to himself as receiver from any of the present employés, or those hereafter engaged by him, as he may think expedient and proper, and to sell the present stock of oil and other products and personal property in the hands of the defendant and which may come into his hands as receiver, and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business, so that said business may be kept up to its present condition as near as may be; and the said receiver
52 shall have power under control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise, as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally to do such acts respecting the property as the court may authorize and all the expenses of said receivership, including taxes, insurance premiums, attorney's fees, his own compensation and all expenses of said receivership to be paid as a part of the court costs of the suit;

"That the temporary injunction heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be, and the same is, hereby continued in force until the further orders of this court.

"To all of which action the defendant in open court excepts, and in open court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas;

"And on this the 13th day of June, A. D. 1907, the court con-

firming said order and in pursuance thereof names and appoints as receiver herein of the property in said order described Robert J. Eckhardt, who is a resident citizen of the County of Williamson, in the State of Texas, with the duties and powers therein named, and fixes the amount of his bond as such receivership at ($250,000) Two Hundred and Fifty Thousand Dollars, to be made payable to the Judge of this Court and his successors in office, for the use of all parties interested in said property and this suit.

"And defendant renewed its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin."

The bond of the receiver was fixed at $250,000, and on the 19th day of June 1907, at 10 o'clock A. M., the bond, with proper sureties, was approved and filed and the said Eckhardt at the same time accepted and qualified as receiver.

53 The court in said cause on the 15th day of June, 1907, made and entered an order fixing the sum of $100,000 as the amount of bond which the Waters-Pierce Oil Company was required to give in order to perfect an appeal from the order appointing a receiver. On the 19th day of June, 1907, at 10 o'clock A. M., the Waters-Pierce Oil Company perfected its appeal from the order appointing a receiver under a bond approved by the court.

On the 15th day of June, 1907, a motion for a new trial previously filed by the Waters-Pierce Oil Company, was by the court overruled; and in open court notice of appeal was given to the Court of Civil Appeals, which notice was entered in the minutes of the court. Thereupon, in the main case, the Waters-Pierce Oil Company, defendant, executed a supersedeas appeal bond from the judgment for penalties and cancellation of permit, which bond was in due form and was properly approved by the clerk of the court.

That on the 19th day of June, 1907, after all of the above mentioned proceedings were had, there was filed in the Circuit Court of the United States for the Eastern District of Texas, on behalf of one Bradley W. Palmer, who claims to be a stockholder in the Waters-Pierce Oil Company, a bill of complaint against the Waters-Pierce Oil Company, with the request for the appointment of a receiver of all the property and assets of the defendant Company situated within the State of Texas. That in response to the prayer of the bill, the Hon. David Bryant, Judge of the Circuit Court of the Eastern District of Texas, appointed one C. B. Dorchester receiver of all of the property and assets of the Company situated within the State. The petition proceeds to state that Dorchester, as receiver, will dispose of the property of the Waters-Pierce Oil Company, thereby depriving the State Court of its authority under the receivership to administer same. The application concludes with a prayer for extensive relief against the receiver appointed by the Judge of the United States Circuit Court, and for all orders and decrees that may be necessary and proper to be entered in protecting this court in the jurisdiction it had acquired over the property

54 by virtue of the appeal from the orders and decrees and judgments of the trial court.

The application when presented, was set for hearing by this Court for Monday, June 24th, 1907; and, under instructions of the Court, notices were caused to be issued to the receiver appointed by the Federal Court and attorneys for the Waters-Pierce Oil Company, of the time and place when the application would be considered. On the day appointed the State and the Waters-Pierce Oil Company appeared; and from statements and arguments in open court then made, and from affidavits and records then presented, the facts substantially alleged in the application of the State were found to be true. And in addition thereto, the fact was established that Dorchester, as receiver, had qualified, and that he was in actual possession of the property of the Waters-Pierce Oil Company situated within the State, and that the receiver appointed by the State was not, and had never been, in possession of any of the property of the defendant Company; that the order of the United States Court was very comprehensive, authorizing the receiver to take possession of all the property of the Waters-Pierce Oil Company within this State, and to carry on and conduct its business and sell its property. The receivership in that court is, like that of the State court, merely confined to the business and property within this State; and there is nothing in the decree of the United States Circuit Court recognizing the right of the State, as fixed by the judgment and decree on appeal in this Court. Nor does it appear that the receivership is merely temporary and for the purpose of protecting the property of the defendant during the pendency of the appeal, but that decree is so comprehensive that final action under it may go to the extent of the final and complete disposition and diversion of all the property and assets of the Waters-Pierce Oil Company within this State.

There is a rule, not only one of comity, but by force of judicial decisions of the highest Court in the land has become one of jurisdiction, a rule so universally recognized that no court will question it, and it may be stated to be, that when the power of a court of jurisdiction is first invoked to seize and administer property, its jurisdiction is exclusive, and no other court of concurrent jurisdiction can interfere to materially disturb or hinder the former in the
55 exercise of its authority and jurisdiction over the *res*.

In Farmers Loan & Trust Company *vs.* Lake Street Elevated Ry. Co. 178 U. S., 59 44 L. Ed. 671, it is said: "The possession of the *res* vests the court which has first acquired jurisdiction with the power to hear and determine all controversies relating thereto; and, for the time being, disables other courts of co-ordinate jurisdiction from exercising like power. This rule is essential to the orderly administration of justice, and to prevent unseemly conflicts between courts whose jurisdictions embraces the same subjects and persons. Nor is this rule restricted in its application to cases where property has been actually seized under judicial process before a second suit is instituted in another court, but it often applies as well where suits are brought to enforce liens against specific property, to marshal assets, to administer trusts or liquidate insolvent estates, and in suits of a similar nature where, in the progress of the litigation, the court may be compelled to assume the possession and con-

trol of the property to be affected. The rule has been declared to be of especial importance in its application to federal and state courts. Peck *vs.* Genness, 7 How. 612, 12 L. Ed. 841; Freeman *vs.* Howe, 24 How. 450, 16 L. Ed. 749; Moran *vs.* Sturges, 154 U. S. 256, 38 L. Ed. 981; Central Nat'l Bank *vs.* Stevens, 169 U. S. 432, 42, L. Ed. 807; Harkrader *vs.* Wadley, 172 U. S. 148, 43 L. Ed. 399."

Chief Justice Fuller, in *Ex parte* Tyler, 149 U. S. 187, 37 L. Ed. 696, said: "In Covell *vs.* Heyman, 111 U. S. 176, where the question arose as to the replevin by process from a state court of property held by a United States Marshal, which this Court held could not be permitted, Mr. Justice Matthews delivering the opinion said: 'The forbearance of courts of co-ordinate jurisdiction administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process of each other, is a principle of comity, with perhaps no higher sanction than the utility which comes from concord; but between state courts and those of the United States, it is something more. It is a principle of right and of law, and, therefore, of necessity. It leaves
56 nothing to discretion or mere convenience. These courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they co-exist in the same space, they are independent and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other, as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void.'

"This principle is applicable here, for whether the sheriff were armed with a writ from a state court or with a distress warrant from a county treasurer, this property was as much withdrawn from his reach as if it were beyond the territorial limits of the State."

This principle has often been recognized and applied when jurisdiction has been exercised in appointment of receivers, which is illustrated in many of the cases to be hereafter cited. Whether this principle shall be applied in affording the complainants in this instance any relief, three matters must first be determined:

1. What was the nature and character of the controversy in the trial court? Was the procedure and relief merely *in personam* or *in rem*, or partly so; and if the latter, at what stage of the proceeding did jurisdiction attach?

2. If it was a proceeding wholly or quasi *in rem*, did this Court retain jurisdiction when the appeals were prosecuted under supersedeas bonds?

3. If an affirmative answer is given to the second question, does the action of the Circuit Court of the Eastern District, in appointing a receiver and taking possession of the property, materially interfere with the exercise of jurisdiction by this Court, or does its acts come within a recognized exception to the general rule?

Before determining these questions we desire to say that, from

what was said in argument in submitting this controversy, and from statements made by counsel who represented the complainant in the Circuit Court, the learned Judge of that court was, in appointing a receiver, influenced to some extent by the opinion in Peoples Cemetery Assn. *vs.* Oakland Cemetry Company, 60
57 S. W., 679, and like cases. We are also impressed with the idea that the learned Judge in making the appointment did not have before him the act of the Legislature which took effect April 11th, 1907. The case relied on was doubtless correctly decided upon the fact peculiar to it, but is not, in our opinion, authority for the proposition that this Court if jurisdiction was obtained by appeal, lost its power over the *res* upon execution of a supersedeas bond. The decision is merely to the effect that the appeal by supersedeas suspends the enforcement of the judgment of the trial court. There is in the opinion an expression that the supersedeas is security for the judgment. This, in one sense, is correct; but it cannot be held to mean that if there is a *res* in controversy which has been brought within the jurisdiction of the court when the appeal was perfected, that the supersedeas bond deprived the court of its power and jurisdiction over the *res* and to finally dispose of the same, and to protect it by the exercise of its jurisdictional authority during the time the controversy is pending. No one denies the fact that a supersedeas appeal suspends the enforcement of the judgment of the trial court; but when we reach the broad question of the jurisdiction over the thing involved in the controversy, the authorities which we will cite in disposing of the questions suggested, are presuasive to the effect that it was never intended that the supersedeas appeal should deprive the appellate court of jurisdiction of the property in controversy, which, in whole or in part, was the subject of litigation.

In disposing of the first question the inquiry is: What was the nature and purpose of the controversy in the State court? A proper answer depends largely upon the purpose and effect of the act of the Legislature of April 11th, 1907, which, as before said, went into operation from its passage. The provisions of that act which relate to the subject under consideration, are as follows:

In Section 1 it is provided: "Whenever any corporation created under the laws of this State, or any foreign corporation authorized to do business in this State, shall violate any law of this State, including any law against trusts, monopolies and conspiracies
58 or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this State at the time of such violation or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and for all costs of suit and of collection, and the State of Texas shall have a lien on all such property from the date that suit shall be instituted by the Attorney General or district or county attorney acting under his direction in any court of competent jurisdiction within this State for the purpose of forfeiting the charter or cancelling the permit of such corporation, or for such fines or pen-

alties. The institution of such suit for such fine, penalties or forfeiture shall constitute notice of such lien. Where any such law has heretofore been violated, or shall be violated before the taking effect of this act, and a cause of action exists for such fine, penalties or forfeiture, or shall come into existence before the taking effect of this act, and suit shall be filed in such case, the State shall have a lien to secure the payment of such fine, penalties and costs from the time this act shall take effect on all property of such corporation within this State or which shall thereafter come or be brought within the State."

Section 2 is as follows: "Any action or cause of action for any fine, forfeiture or penalty that the State of Texas has or may have against any corporation chartered under the laws of this or any other state, territory or Nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter. Whenever a corporation against which the State has heretofore instituted suit or shall hereafter institute suit, for forfeiture of its charter, or cancellaion of its permit, or for fines or penalties under any law of this State, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state for the forfeiture of its charter, the court in this state in which suit is pending shall appoint a receiver for the property and business of such corporation within this State or that may come or be brought within this State during such receivership, or the court may, in any case wherein the State is suing any such corporation for the forfeiture of its charter
59 or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation, whenever the interests of the State may seem to require such action. If such dissolution shall take place or judgment of forfeiture be rendered against such corporation before this act takes effect, the court shall, upon the taking effect of this act, appoint a receiver for the property and business of such corporation in this State; and the State shall have the right to the writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by this act; and all property that may come into the possession of any receiver appointed under the provisions of this act, not otherwise exempt by law, shall be subject to the lien herein created, and for the payment of any such fine or penalty."

Section 3 is as follows: "The Attorney General, or any district or county attorney acting under his direction, may bring suits in the name of the State of Texas for the foreclosure of such lien in the district court of any county in the State of Texas, and in case the suit for foreclosure should be brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such corporation for the forfeiture of its charter or cancellation of its permit or for penalties or fines, service may be had upon any person within this State who acted and was acting as agent of any such corporation in this State at the

time of such dissolution or forfeiture of charter or cancellation of permits."

The validity of this act in any of its terms was not questioned at the submission of this controversy; and we know of no good reason why its main features, which we propose to discuss, could be objected to on constitutional grounds. But, however, that question is not before us, and for the purposes of the disposition of this application, we must treat the act in all respects as valid.

It is apparent the trial court had before it the act in question, and that it largely governed that court in granting the injunction and entering the order appointing a receiver. Reasonable minds can hardly differ as to the purpose, scope and effect of this act. One of its principal purposes is to subject the property of the cor-
60 poration to the jurisdiction of the court upon judgment for penalties and decree of forfeiture of permit, in order that an ultimate benefit would result to the State from the judgment rendered; and that, in keeping with the policy of the statute that condemned in the interest of the public the illegal business, the State could, upon dissolution of the franchise to do business, by control of the property and the business, administer the same in the interest of all concerned, and thereby could effectually check a further pursuit of the illegal business by the corporation adjudged guilty. A proceeding having for its purpose these objects, is clearly one *in rem*, and if the terms of the statute are invoked to accomplish all the purposes authorized, a seizure of the property is absolutely essential, and the way opened by the statute to accomplish this is through a receiver, and the court having so ordered and decreed the appointment of one, there was drawn to the custody of the court all of the property of the corporation, and for all of the purposes enumerated, as stated in the order. For the efficient enforcement of the terms of the statute, in addition to the lien created by it it also provided for a judicial possession and seizure of the property; and when the court, by virtue of this law, laid its hands upon it, its jurisdiction completely attached, not only to the person of the defendant, but to the thing that the law made liable for the consequences of the illegal acts denounced by the statute upon which the suit is based.

When did the property become in *custodia legis*, and when did the jurisdiction of the trial court attach? For the purpose of this controversy we need not discuss the conflict of decisions which on the one hand hold that the jurisdiction is complete from the filing of the bill, and upon the other that it does not attach until service of subpœna, for here in this instance it is clear that the defendant corporation was in court properly served and appeared in the receivership proceeding. When service is had or there is the equivalent by appearance, if there could be any doubt as to which of the two lines of decisions should prevail, the weight of reason and authority is clear to the effect that the jurisdiction of the court will, under the doctrine of relation, after order made commence
61 from the time of the filing of the bill for appointment, although no possession has been taken by the receiver of the property sought to be administered by the court. This principle

is well settled. "The commencement of a suit, the object of which is to have certain property sequestered and administered for the benefit of all having an interest therein, and the possession and control of which are necessary to grant the full relief prayed for, constitutes an equitable levy; and, pending the suit, such property is in *gremio legis*, and the court whose jurisdiction is first invoked, whether state or federal, has the exclusive rights to seize and administer the property over another court of concurrent jurisdiction in which a subsequent suit is commenced, though a receiver be first appointed therein and actually takes possession of the property." Alderson Receivers 24.

In Illinois Steel Co. *vs.* Putnam, 60 Fed. Rep. 515, in the Circuit Court of Appeals presided over by the circuit judge of the district, in reaffirming the doctrine of Adams *vs.* Mercantile Trust Company, 66 Fed. Rep. 621, a decision also participated in by Judges Pardee and McCormick, the court said "Where a bill in equity brings under the direct control of the court all the property and estate of the defendants or of certain named defendants, or certain designated property of all or either of the defendants, to be administered for the benefit of all entitled to share in the fruits of litigation, and the possession and control of the property are necessary to the exercise of the jurisdiction of the court, the filing of the bill and the service of the process is an equitable levy on the property; and, pending the proceeding, such property may properly be held to be in *gremio legis*. The actual seizure of the property is not necessary to produce this effect where possession of the property is necessary to granting of the relief sought. In such cases the commencement of the suit is sufficient to give the court whose jurisdiction is invoked the exclusive right to control the property."

It is said by the court in Dillon *vs.* The Oregon Short Line Ry., 66 Fed. Rep., 1622, that this rule is founded not only on comity, mere courtesy, but on utility and principles of sound policy. There are many authorities that announce substantially the same rule, among which may be mentioned Thompson *vs.* Holliday, 15 Ore. 34, 14 Pac. Rep. 725; Marian *vs.* Ross, 122 Mo. 435, 25 S. W.,
62 942; Judd *vs.* Bankers and *and* Merchants Tel. Co., 31 Fed. Rep. 182; Union Trust Co. *vs.* Rock Island Ry. 6 Biss., 197, and another like case in the same book on page 286; May *vs.* Printup, 59 Ga. 129; People *vs.* Central Bank, 53 Bar. 412; *In re* Hall & Stillson, 69 Fed. Rep., 425; Reisner *vs.* the Gulf, Colorado & Santa Fe Ry., 89 Tex., 659; Northwestern Iron Co. *vs.* Lehigh Coal Co. 92 Wis. 487, and Texas Trunk Ry. *vs.* Lewis. 81 Tex., 1. The two Texas cases cited are instructive upon this subject, and fully support the text as quoted.

In Reisner *vs.* Gulf, Colorado & Santa Fe Railway Co., *supra*, it is said in speaking of the appointment of a receiver: "This action of the judge was sufficient, if followed up in due time by the appointment of a receiver, to fix the jurisdiction of that court upon all of the property of defendant in that suit as to liens thereafter attempted to be acquired through the process of other courts. Under such cir-

cumstances the appointment, when made, would relate back to the filing of the bill."

Hence in this case, from the orders reviewed in the light of these authorities, it is clear that the State court had acquired complete jurisdiction of the *res*, which it fully retained until the appeal to this court was perfected; and during the existence of its authority, under the doctrine stated, no court had the power to disturb its jurisdiction or invade its limits; and here at this point it is proper to consider the second question.

In Gulf, Colorado & Santa Fe Ry. *vs.* F. W. & N. O. Ry. 68 Tex., 103, it is said: "When an appeal from a final judgment of the district court is duly perfected, the jurisdiction over the case ceases in that court upon its adjournment for the term and attaches to the Supreme Court. An injunction existing in the lower court at the time of appeal may be conceded to become the injunction of the court to which the appeal is taken. Teas *vs.* McLaughlin, 6 Grat., 609, Ry. Co. 105 Pa. St., 13; Yoeman *vs.* Leasley, 36 Ohio St., 416; Slaughter House Cases, 10 Wall 292."

In San Antonio Street Ry. *vs.* State, 38 S. W., 95, it appears a mandamus was issued by the trial court requiring the Street
63 Railway Company to operate a part of its road. There was an appeal by the Street Railway Co., under a supersedeas bond from this decree. During the pendency of the appeal it was made known to the Court of Civil Appeals where the case was pending, that the Railway Company was removing the rails and destroying the track. Thereupon that court issued an injunction restraining a further destruction of the track, etc. In the opinion delivered, in the exercise of its jurisdiction by injunction, and in holding the officers of the Company guilty of contempt, it was said: "The appeal from the trial court removed the case from that court and placed it with the parties, as well as the subject matter of litigation, wholly within the jurisdiction of this tribunal; but the judgment of the district court is not affected by the appeal further than proceedings to enforce it are stayed, a supersedeas bond having been filed."

The court in the case of Churchhill *vs.* Martin, 65 Tex., 368, in speaking of its jurisdiction, says: "That the execution of a judgment awarding a p-remptory writ of mandamus may be suspended by a proper appeal bond, is not an open question in this court. Griffin *vs.* Wakelee, 42 Tex., 513. After the approval of such a bond the district court, during the term, still has jurisdiction to modify or set aside the judgment appealed from (Blum *vs.* Wettermark, 58 Tex., 125, Garza *vs.* Baker, 58 Tex., 487), but not to enforce such judgment. When the bond has been filed and approved the complaining party has done substantially all required of him to give this court jurisdiction of the case; and this court may then, under the Constitution to protect and enforce its jurisdiction, issue writs of injunction, etc."

In Wells *vs.* Littlefield, 62 Tex., 30, the Supreme Court, in speaking of its jurisdiction, says: "So soon as the jurisdiction attaches under an appeal or writ of error, this Court has full control of the cause, and can make such orders concerning it as may be necessary

to preserve the rights of the parties and enforce its mandates. This jurisdiction continues until the case as made by the appeal or writ of error is fully determined by this Court, and its judgment is completely executed by the court below. If the judgment below is affirmed, or reversed and rendered or reformed, this Court
64 can see that the party in whose favor its decision has been given has the benefit of all proceedings below necessary to enforce its judgment."

Of course, it is needless to say that what is said in these cases with reference to the jurisdiction of the Supreme Court under the old system is applicable to the jurisdiction of the Courts of Civil Appeals under the present system. It would be idle to engage in argument to demonstrate this proposition.

When an appeal is perfected the jurisdiction of the appellate court attaches, not partially or imperfectly, but to the entire controversy that is involved in the proceeding on appeal. The supersedeas bond does not affect the jurisdiction of the court over the subject of controversy; it merely suspends the enforcement or execution of the judgment below. The purpose of the law is to keep alive the jurisdiction over the subject matter, and this upon appeal is a mere transfer from one tribunal to another; and can it be reasonably contended that when it reaches the tribunal in which a bond is required of the party appealing that he will abide by the judgment, sentence or decree of the court, that all jurisdiction of the subject matter ceases, and that the court is limited in its authority only to what liability may be established against the obligors in the bond. Of course, such a proposition is absurd; for in many cases the subject of litigation, the *res,* would, by reason of this process of evolution, be finally converted when the appellate court reached its decision into practically a proceeding *in personam.* If there is a *res* in controversy it remains so to the end; and it was never intended that a supersedeas bond would destroy the power of the court to determine the rights of the litigants to the thing in controversy and enter such a decree as may be proper to its disposition. The State, by reason of the appeal bond, lost no remedy it invoked in the trial court and for which a judgment or decree went in its favor; and when the case reached here it fell into our jurisdiction with all of the authority of this Court extended over all of its parts, which jurisdiction was as full and complete as that possessed by the trial court before appeal; and if that court had such jurisdiction of the *res* before appeal that no tribunal of co-ordinate jurisdiction could disturb it, for a like reason there should be no invasion of the jurisdiction of this Court.

65 In disposing of the third question it is sufficient to say that it is hardly possible to make a decree broader than that of the Circuit Court. It requires the receiver to take possession of the property of the Oil Company, and to administer and dispose of it as he sees proper. It would be improbable that the State would reap much benefit from its judgment if the receiver appointed by the Circuit Court would exercise all of the powers and authority conferred upon him by the decree. Hence it is clear that the exercise of jurisdiction by that Court will materially affect the interests

of the State and the exercise of jurisdiction by this Court. An examination of the authorities illustrating the question that a second receivership will be allowed by another court, in certain instances, affords no case that will justify the assumption of jurisdiction by the Circuit Court of the Eastern District in taking possession of the property in controversy. The decree of each court appointing a receiver is as broad as the other. Under each the same purposes can be accomplished, and the same protection and rights accorded; and we see no peculiar circumstances existing which would justify the interference by the Circuit Court on the ground that the proceedings as to the receivership in that court is different from the one pending in this court; nor can that decree be construed as a mere temporary expedient looking to the preservation and protection of the property during the time the case in this Court is pending on appeal.

Complainant's prayer is for very enlarged orders, going to the extent of asking this Court to appoint a receiver to recover and take possession of the property and mandatory injunction against the receiver Chester B. Dorchester to forthwith cease acting as receiver and to turn over and deliver to the receiver to be appointed by this Court control and management of all of the property of the defendant Company, and an injunction enjoining and restraining the Waters-Pierce Oil Company, and its agents and representatives from selling and disposing of all or any of the property, and from removing the same out of the State of Texas pending the final disposition of this appeal. There is also a request for an order

66 authorizing the receiver so appointed by this Court, either alone or in conjunction with the State of Texas, to take all necessary and proper steps, and to file and prosecute in said receivership proceedings in the Circuit Court of the United States for the Eastern District of Texas and elsewhere, any and all suits, pleas and applications as he and the attorneys for the State may consider proper and expedient to procure the surrender of all of the property from Chester B. Dorchester, or other receiver that may be appointed to act with him or as his successor.

There are only two members of this court present, the third being unavoidably absent on account of sickness, therefore, the Court has been unable to agree upon the questions whether the plaintiff is or is not entitled to all of the relief asked; and if we see proper to do so, each member of the Court may, in separate opinions or orally, state his views on the questions of difference. But, however, we have agreed that while the receiver Eckhardt appointed by the State court is, by virtue of the supersedeas bond, unable to take possession of the property, he is so far subject to the jurisdiction of this Court, by virtue of his qualification as receiver, as would permit us to request and direct him, in conjunction with the plaintiff, the State of Texas and its attorneys, to appear before the Hon. Circuit Court of the United States for the Eastern District of Texas, and there by suit, pleas and applications urge and insist upon the rights of the State and the jurisdiction of this Court in and to and over the property in controversy, and to ask for such orders, decrees and judgments as they may deem necessary and proper, and to appeal and

perfect such appeals and writs of error as they may deem proper and necessary.

In Shields *vs.* Coleman, 157 U. S. 153, 39 L. Ed. 662, where there was a clash of jurisdiction between the state and circuit courts, the course here suggested was the one that was pursued in the case cited. In other words, it appears that the state receiver appeared before the Circuit Court of the United States when he was deprived of possession of the property by order of that Court, and filed his motion setting up the facts entitling him to possession, which was passed upon by the Circuit Court and the relief prayed for was denied.

67 There was an appeal from that decree and its merits are considered in an opinion by Judge Brewer, where final relief was by the Supreme Court of the United States accorded the state receiver in accordance with the terms of his prayer.

We feel that if the distinguished Judge who presides over the Circuit Court and who granted the receivership, after full consideration concludes that our views as expressed in the opinion handed down are correct, that he will readily and promptly grant such relief as the State and the receiver appointed by the State court are entitled to.

FISHER,
Chief Justice.

Filed June 28, 1907.

(Endorsed:) No. 4179. The Waters-Pierce Oil Co. *vs.* The State of Texas. Opinion. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, June 28, 1907. R. H. Connerly, Clerk. Fisher, Chief Justice.

No. 4179.

THE WATERS-PIERCE OIL CO.
vs.
THE STATE OF TEXAS.

The questions of remedy upon which the two members of this Court differ are, first, whether this Court has the power to issue writ of injunction or other process in any wise disturbing the possession and control of the Circuit Court of the Eastern District and its receiver over the property in controversy; second, whether the act of the Legislature of April 11th, 1907 confers upon this Court original jurisdiction to appoint a receiver, or whether this Court would have jurisdiction, independent of this statute, to appoint a receiver during the pendency of the appeal.

68 In my opinion the power of this Court in neither of the instances stated exists. I am not going into any extended discussion of these questions, but will state, in a general way, my reasons why we are lacking in jurisdiction. It is clear to my mind whether the Circuit Court has possession of the property rightfully or wrongfully is not a question to be considered in determining whether or not process from this Court, one of co-ordinate jurisdic-

tion, will issue to restrain it and its agents in the control and possession of the property. There have been possibly a few instances in which the court that first acquired jurisdiction has undertaken to run its process against a court of co-ordinate authority, such possibly, as the cases of Home Insurance Co. *vs.* Howell, 24 N. J. Eq., 238 and Ackerly *vs.* Vilas, 15 Wis., 401, but the weight of authority and in my opinion, the reason upon which it is based, precludes the exercise of such jurisdiction. The principle is correctly stated in Central National Bank *vs.* Stevens, 169 U. S., 458, 42 L. Ed. 817, which voices the great volume of decisions upon this question, "that the state courts are exempt from all interference by the Federal tribunals, but they are destitute of all power to restrain either the process or proceedings in the national courts. Circuit courts and state courts act separately and independently of each other, and in their respective spheres of action the process issued by the one is as far beyond the reach of the other as if the line of division between them was traced by landmarks and monuments visible to the eye." When it is conceded that the jurisdiction of the court that first attaches is exclusive it may be that an anomoly results when jurisdiction is denied to assert its authority against the wrongful invasion by some other tribunal; but in many of the cases that may be cited upon this question, the reasons are fully explained, and it would be a mere repetition upon our part to undertake to give them, why courts of co-ordinate jurisdiction will not interfere in the administration of jurisdiction by each other. Now it is a well settled principle that when property is brought in possession of the court under receivership proceedings, that the receiver is merely an arm
69 and agent of the court, and that the property is in the actual possession and control of the court merely through the medium of a receiver. If we would undertake to issue a restraining process or process of any other nature that undertook to interfere with the exercise of authority over the property by the receiver, it would, in its legal effect, operate against the possession and control of the court, and in my opinion this cannot be done.

The next question presents one of more difficulty, and I wish to say, in this connection, that while I have given the subject such consideration as the other business pending before this court and the short time remaining of our session would permit, I have reached a conclusion which may possibly hereafter be changed; but as I now at present view the question, the statute invoked does not in my opinion confer original jurisdiction upon this Court to appoint a receiver. The expression, "the court in this state in which the suit is pending," relates in my opinion to the court in which the suit is instituted. Time will not permit me to extensively review this statute, nor to give the reasons why in my opinion it was not the intention of the Legislature to confer original jurisdiction upon the courts of civil appeals to appoint receivers. It may be claimed that the provisions of the Constitution and the statutes generally that define our jurisdiction authorize us to appoint a receiver when it may become necessary to enforce the jurisdiction of this Court. I am of the opinion that such a construction would be unwarranted. I am not denying

the fact that the Legislature may, under the Constitution, confer original jurisdiction upon the Court of Civil Appeals to appoint a receiver, but in my opinion they have not done so.

The authority of this Court is also invoked to restrain the defendant the Waters-Pierce Oil Co. from removing from the limits of this State its property or from disposing of the same. The application of the State presents no case that would justify this interference. If the Circuit Court should see fit to accede to the views of this Court concerning its jurisdiction and discharge its receiver and release the property, the defendant the Waters-Pierce Oil Company
70 would under the supersedeas appeal be entitled to possession during the pendency of the appeal in this court, such property however subject to the exercise of the jurisdiction of this court if it should be made to appear that the defendant was attempting to disobey the injunction of the trial court or to destroy the thing in its possession, which constituted the subject matter within the jurisdiction of this Court. But, as said before, no such case has been made by the State. It is time enough to rule upon those questions when we are confronted with a state of facts that calls for their judicial consideration.

FISHER,
Chief Justice.

Filed June 28, 1907.

(Endorsed:) No. 4179. The Waters-Pierce Oil Co. *vs.* The State of Texas. Separate Opinion by Fisher, C. J. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas. June 28, 1907. R. H. Connerly, Clerk.

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Concurring with Chief Justice Fisher in the views so well expressed and sustained on the paramount question in this case, the writer deems it proper to reduce to writing his views upon the questions upon which we are unable to agree. Upon these questions I am of the opinion that this Court has the power to appoint a receiver, and that it should do so, in view of the facts stated in the verified motion and not in any wise controverted. I am also of the opinion that this Court has the power to and should issue a writ of injunction, or some other appropriate writ, against Mr. Dorchester, requiring him to surrender the property of the defendant, the Waters-Pierce Oil Company, to the receiver appointed by this Court.

71 1. As to the first question, in the absence of statutory authority I am not prepared to hold that the appellate courts of this state do not possess the inherent power to appoint receivers whenever such action may be necessary to a proper disposition of the litigation upon final appeal. That valuable compendium, the Amer-

ican & English Ency. of Law, in volume 8, page 28, states the rule upon that subject in the following language: "Every regularly constituted court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, and to prevent any abuse of its process." And the Supreme Court of the United States in Pacific Ry. Co. *vs.* Mo. Pac. Ry. Co. 95 U. S. 23, which was pending in that Court on appeal, considered an application presented for the first time in that Court for the appointment of a receiver. The application was not dismissed nor refused upon the ground that the Court was without jurisdiction to appoint a receiver; and the Court, speaking through Chief Justice Waite, said: "Without undertaking to decide whether a case may not arise in which we would exercise the power of appointing a receiver pending an appeal in this Court, we are clearly of the opinion that we ought not to do so upon the showing made here." But, aside from the question of the general and inherent power of this Court to appoint a receiver, and without committal upon that subject, the writer is satisfied that such power has been conferred, and now exists, by the second section of the act of the 30th Legislature, which was approved and became operative April 11th, 1907. It is there provided "Whenever a corporation against which the State has heretofore instituted suit, or shall hereafter institute suit, for the forfeiture of its charter or cancellation of its permit, or for fines or penalties, under any law of this State, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state for the forfeiture of its charter, the court in this State in which such suit is pending shall appoint a receiver for the property and business of such corporation within this State, or that may come or be brought within this State during such receivership; or the court may, in any case wherein the
72 State is suing any such corporation for the forfeiture of its charter or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation whenever the interests of the State may seem to require such action."

It will be observed that in framing this law, when the matter of power to appoint receivers was reached, the Legislature did not limit that power to the district court, or any other court designated as a class, nor to the court in which the suit was instituted, but in clear and unambiguous language, conferred that power "*upon the court in this State in which such suit is pending.*" The other reference to the court thereafter made in the same sentence and authorizing the appointment of a receiver whenever the interests of the State may seem to require it, is not, in terms, limited to the trial court and is equally applicable to an appellate court. It is not denied, and must be conceded, that the case is now pending in this Court, and that the State is sueing a corporation for the forfeiture of its permit to do business in this State and for fines and penalties, and no other court has jurisdiction over it. Therefore this Court comes within the literal terms of that portion of the statute which confers jurisdiction to appoint a receiver; and I find no reason in any portion of that law for the conclusion that the Legislature did not intend that

the language referred to should have its ordinary and usual significance. On the contrary, the rule of construction prescribed by statute in this state requiring statutes to be liberally construed in order to accomplish the legislative purpose, and the legislative history of this State upon the subject to which this statute relates, and especially the manifest purpose intended to be accomplished by this statute, lead, it seems to me, to the inevitable conclusion that it was the intention of the Legislature to confer power to appoint a receiver upon the court exercising jurisdiction over the case at the time of the happening of the contingencies referred to in the statute. It is not unreasonable to presume that the Legislature had in mind the probability that, in some instances, the contingencies referred to might arise after the case was disposed of in the trial court and was pending on appeal in an appellate court; and that, for that reason, the broad language referred to was used in order to better protect what the Legislature regarded as the interests of the
73 State. Since 1899 the Legislative department of this State has been enacting laws upon the subject of trusts, and each successive enactment has been an enlargement of those preceding, and they all manifest a fixed and continued purpose to control corporations and prevent them from committing acts regarded by the Legislature as detrimental to the public interest. Various other enactments of the 30th Legislature disclose such purpose, but the one now under consideration makes manifest an intense purpose to reach out and make available instrumentalities and powers not heretofore used for the purpose of rendering effective anti-trust legislation.

And here it is not inappropriate to quote and apply the language of Chief Justice Stayton in G. H. & S. A. Ry. *vs.* the State, 77 Tex., 410: "In construing a constitution, or any other law, the object sought is the true intent of the law maker, which must be ascertained from the language in which the law is written, and in considering this it is always important to keep in view the object which the law maker intended to accomplish through its enactment. The more intensely the law maker may be seen to have desired to accomplish the given purpose, the more weight should be given to the language used in a law looking to that end." While this language was used in a dissenting opinion it announces rules of construction that are well settled, and that seem specially applicable in the construction of the statute now under consideration.

Hence I conclude that this Court comes within both the letter and spirit of that portion of the statute referred to which confers power to appoint receivers. If such power constitutes original jurisdiction it was competent for the Legislature to vest it in this Court, because the Constitution as amended in 1891 expressly authorizes the Legislature to confer other jurisdiction, both appellate and original upon the Courts of Civil Appeals. As published in the Revised Statutes, that provision of the Constitution is omitted, but it is, nevertheless, a part of that instrument. If the court has the power to appoint a receiver, I think the facts stated in the applica-

tion and not controverted, make it appear that the interest of the State seems to require such appointment to be made.

2. By the terms of Art. 997 of the Revised Statutes of
74 this State, the Courts of Civil Appeals have the power to issue writs of mandamus and all other writs necessary to enforce their jurisdiction. Of course, it cannot be successfully contended that one court can issue and enforce any process against another court of co-ordinate jurisdiction and control its official action, but when a court goes beyond the limits of its jurisdiction, and undertakes to do that which it has no power to do, such action is null and void; and it is for this reason and upon this ground that I hold that this Court can properly issue an injunction against Mr. Dorchester. Authorities cited in the main opinion of Chief Justice Fisher satisfy my mind that this Court had jurisdiction of the property of the defendant Waters-Pierce Oil Company, and that that property was in *custodia legis* when the Judge of the Circuit Court of the United States attempted to appoint Mr. Dorchester receiver of that property; and, such being the case, the authorities referred to and many others, establish the proposition that the Federal Court at that time had no power to appoint a receiver for the property, and that the alleged appointment of Mr. Dorchester was and is absolutely null and void. My views on that subject cannot be *better* expressed than by borrowing the language of the Supreme Court of the United States in Covell *vs.* Heyman, 111 U. S., 176.

"The forbearance which courts of co-ordinate jurisdiction, administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process of each other, is a principle of comity with perhaps no higher sanction than the utility which comes from concord; but between state courts and those of the United States it is something more. It is a principle of right and law and, therefore, of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system so far as their jurisdiction is concurrent; and although they co-exist in the same space, they are independent and have no connom superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To at-
75 tempt to seize it by a foreign process is futile and void."

As I understand the law, whenever an alleged official act is in excess of power and utterly without authority, such act can confer no power or right upon anyone. Hence I am of the opinion that as Mr. Dorchester's alleged appointment as receiver is absolutely null and void, it is competent for this Court, upon a proper showing, to issue a writ of injunction against him. Such writ would not run against him as receiver of the property, acting under the authority of the Federal Court, but as an individual, acting without authority. Therefore if this Court should appoint a receiver to hold and preserve the property while the case is on appeal, I think it would be proper, if it became necessary, to issue a writ of injunction, or any

other appropriate writ, to enable such receiver to secure and retain possession of the property.

In conclusion, it is not inappropriate to say that we have dealt with this delicate matter upon the assumption that the Honorable Judge of the Circuit Court of the United States in dealing with it, acted upon no other motive than a high sense of official duty, and the matter has been dealt with in this Court upon the same exalted plane. Nevertheless, being of the opinion that the Honorable Judge referred to exceeded his powers, and that his order appointing Mr. Dorchester receiver conferred no authority upon the latter, and that Mr. Dorchester's conduct in taking possession of the property for the purposes stated in the application under consideration constitutes an invasion of the jurisdiction of this Court, I believe it is our duty, under the circumstances, disclosed, to take all necessary and proper steps to prevent its continuance.

W. M. KEY,
Associate Justice.

Filed June 28, 1907.

(Endorsed:) No. 4179. The Waters-Pierce Oil Co. *vs.* The State of Texas. Separate Opinion by W. M. Key, A. J. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, June 28, 1907. R. H. Connerly, Clerk.

76 *Order Made October 16th, 1907, on Motion to Advance the Cause.*

Motion 2825. #4213.

WATERS PIERCE OIL COMPANY
vs.
STATE OF TEXAS.

Appeal from Travis County.

Motion for advancement of cause; the motion is granted and cause set for hearing and submission on Monday, October 21st, 1907 at nine o'clock A. M. and that the clerk notify the parties hereof in the manner prescribed by law.

Order Made October 23rd, 1907, on Motion to Consolidate the Causes.

Motion 2827. #4213.

WATERS PIERCE OIL COMPANY
vs.
STATE OF TEXAS.

Appeal from Travis County.

Motion to consolidate this cause with cause No. 4212; the motion is overruled.

Judgment Rendered October 23rd, 1907.

No. 4213.

WATERS-PIERCE OIL COMPANY
vs.
STATE OF TEXAS.

Appeal from District Court of Travis County.

Opinion by Chief Justice FISHER:

"This cause came on to be heard on the transcript of the record, and, the same being inspected, because it is the opinion of the Court that there was no error in the judgment; it is therefore considered, adjudged and ordered that the judgment of the Court below be in all things affirmed; that the appellant, Waters-Pierce Oil Company, principal and its surety, American Surety Company of New York, pay all costs in this behalf expended, and this decision be certified below for observance."

77 No. 4213.

THE WATERS-PIERCE OIL CO., Receivership Proceeding,
vs.
THE STATE OF TEXAS.

Appeal from Travis County.

Opinion.

This is an appeal by the appellant from an order entered by the trial court appointing a receiver for the properties of the appellant Company situated within the State of Texas. The history of the proceedings and the subject matter of controversy and the result reached by the trial court is fully explained and set out in the opinion of this Court handed down in this case on June 28th, 1907. There is also set out in that opinion the act of the Legislature of April 11th, 1907, which we there construed and held to authorize the course pursued by the trial court, which is objected to in the appeal we are now considering. It is necessary for us to recapitulate what was stated in the opinion referred to. We there, in effect, held that the act of the Legislature referred to was constitutional, which ruling, after further consideration, we adhere to. The act in question clearly authorized the procedure pursued by the trial court, and the spirit, meaning and purpose of the act authorized the court, upon dissolution of the permit to do business within this State of appellant's Company at the instance of the suit by the State, to appoint a receiver for its properties within its jurisdiction. The reason for this conclusion we undertook to state in the opinion referred to, which agrees with the conclusion of the trial judge, as stated in the bill of exception which is a part of the record in this case.

Independent of the power conferred by the act of the Legislature reviewed, we are of the opinion that the court had the authority to appoint a receiver by virtue of subdivision 3 of Art. 1465, Sayles Civil Statutes. That subdivision is to the effect that a receiver may be appointed where a corporation is dissolved or is insolvent or in imminent danger of insolvency, or has forfeited its corporate
78 rights. The corporate right of the appellant Company to do business within this State was by virtue of a permit that had been granted to it by the State, and when an action is brought by the State to cancel and dissolve that permit, it is a proceeding which in our opinion comes within, if not the exact letter, the spirit and meaning of that part of the subdivision of the statute which relates to the forfeiture of the corporate rights of the corporation.

It is contended by the appellant that in the appointment of the receiver the trial court proceeded without pleading and evidence. The record and proceedings brought to this Court by the appellant for our review contains no statement of facts, but there is a bill of exception which was approved by the court, in which it is stated that the court in passing upon the question of the appointment of the receiver, took judicial notice of the facts exhibited in the main case upon which the receivership is predicated, and of the judgment and decree rendered in that case, wherein it appears from the record in this case the judgment against the appellant corporation was for a large sum, and also forfeiting its permit to carry on and conduct its business within this state. That branch of the case in which the receiver was appointed is merely an arm of the main case, and is incidental to that proceeding. Both of the statutes quoted and mentioned authorize and empower, if they do not expressly direct, the trial court to appoint a receiver when the State obtains its judgment canceling the permit. And there is another provision of the act of 1907 which authorized a receiver to be appointed when the interests of the State might require it to be done. In view of these statutes it is folly to say that the trial court must lose sight of the main controversy when he undertakes to appoint a receiver; that before that jurisdiction can be exercised he must again rehear and review the facts that were established in the original case upon which the receivership depends, and we are of the opinion that the court was correct in the conclusion that it could take judicial knowledge of the facts established in the main case and the judgment based thereon. The appellant has seen fit to perfect a separate appeal from the order appointing a receiver, and it has no statement
79 of facts in the record showing that the facts which the court took judicial knowledge of did not exist and were not sufficient to authorize the action of the court in making the appointment. The effect of the action of the court was to hold that the facts that he took judicial knowledge of were sufficient to authorize and justify the appointment. The record here shows that the State has actually recovered a judgment for penalties and for cancellation of the permit to do business. The presumption will be indulged in favor of the action of the trial court, and no fact appearing in the record brought up here by the appellant which would negative and destroy the

force of this presumption, we must hold that we have in this record facts sufficient to justify the judgment below.

It is contended by the appellant not only that the facts are not sufficient, which contention we have just disposed of, but that the appointment was made by the court without being predicated upon any pleading in the nature of a petition or bill by the State asking for and showing grounds for the appointment of a receiver. The document filed by the State upon which the court acted in making the appointment, we construe to be of the nature of a pleading. It is addressed to the court and states facts under the statutes discussed that would authorize the court to appoint a receiver. A general demurrer was interposed, it seems, to this application and was overruled. It states grounds and reasons why the court should make the appointment, and some of these reasons stated are of the nature embraced in the statutes upon which a court may act in making the appointment. But however, if it could be held that the application of the State could not be regarded as a petition or a bill or something in the nature of a pleading requesting the appointment of a receiver, or if an instrument of this character but fatally defective, then the question on in the case of forfeiture of the franchise or permit and the power of the court to appoint a receiver is set at rest by the case of San Antonio Gas Co. *vs.* the State, 54 S. W., 293. It is there, in effect, held that where there is a judgment forfeiting the cor-
80 porate rights the court can, independent of the request of anyone, exercise his judicial discretion as to whether he will or will not appoint a receiver. It is unnecessary to repeat what the court in that opinion says upon the subject. The proposition is forcibly discussed and the ruling is squarely to the effect that the court can, without request, make the appointment in such a case.

As said before, we find no constitutional objection to the statutes under which the court acted in making the appointment. What we have said is all that we think necessary to be said in disposing of this appeal.

FISHER,
Chief Justice.

Filed Oct. 25, 1907.

(Endorsed:) With App. No. 5668. No. 4213. Waters-Pierce Oil Company, Receivership Proceeding, *vs.* The State of Texas. Filed in Supreme Court Dec. 12, 1907. F. T. Connerly. Appeal from Travis County. Opinion. Affirmed. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Oct. 25, 1907. R. H. Connerly, Clerk. Fisher, Chief Justice.

In the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

WATERS PIERCE OIL COMPANY, Appellant,
vs.
THE STATE OF TEXAS, Appellee.

Appellant's Motion for Rehearing.

In the above cause now comes the Appellant, the Waters Pierce Oil Company, and moves the Court to set aside its judgment herein entered on the 23rd day of October, A. D. 1907, affirming the action of the District Court of Travis County in appointing Robert J. Eckhardt as Receiver of Appellant's property, and to grant to
81 appellant a rehearing in this Court of all matters involved in this appeal, and as grounds relied upon for such rehearing Appellant says that this Court erred in its said judgment of affirmance and in its rulings and decisions made in connection therewith and in support thereof, in the following particulars, viz:

1. This Court was without jurisdiction, and acted in excess of and beyond the proper exercise of its jurisdiction in considering the validity of the appointment of the said Eckhardt as Receiver before considering and deciding the validity of the judgment rendered June 1st, 1907, against Appellant in said District Court, which said judgment was made the basis for said appointment in the application filed by the State for the appointment of a receiver.

2. The Court erred in overruling appellant's motion to consolidate this proceeding with Appellant's appeal from said judgment of June 1st, 1907, and from said orders appointing said Eckhardt as Receiver in said main cause, as shown by the transcript of the entire record of the judgment and all orders and proceedings in said main cause, including the orders and proceedings in connection with said appointment of Eckhardt as Receiver, which said appeal embracing the entire case was first docketed in this Court as Cause No. 4212, and is now pending and undetermined before this Court.

3. This Court erred in overruling Appellant's eighth assignment of error and in holding that the said District Court was authorized by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, to appoint a receiver to take charge of Appellant's property, because said Act of the Legislature is void and is an *ex post facto* law, in violation of Section 10, Article 1, of the Constitution of the United States, in attempting to create a lien upon Appellant's property for the acts committed by it before said Act took effect in violation of the Anti-trust Laws of the State of Texas, and for which it was convicted and penalties assessed against it in the said judgment of conviction rendered against it on June 1st, 1907.

4. This Court erred in overruling Appellant's sixth assignment of error and in holding that the said District Court was author-
82 ized by the Act of the Legislature of the State of Texas of April 11th, 1907, to appoint a receiver to take charge of Appellant's property, because said Act of the Legislature, in attempting

to create a lien upon Appellant's property for the alleged violation of the Anti-trust Laws of the State of Texas, by providing that the State shall have such lien from the date of the institution of a suit by the Attorney General, or a district or county attorney under his direction, in any court of competent jurisdiction in this State for the purpose of forfeiting the charter or cancelling the permit of a corporation violating the said Anti-trust Laws, and for fines and penalties against such corporation for such violation, does not prescribe a fixed and uniform rule of law applicable to all persons alike, but it a delegation of the legislative power to officers of the Executive Department to create the lien, or not create it, and discriminate between persons at will, and therefore the appointment of a receiver to take charge of Appellant's property under this statute was unconstitutional, since it results in depriving Appellant of its property without due process of law and in denying to Appellant the equal protection of the laws, in violation of Section 1, of the 14th Amendment to the Constitution of the United States, which provides that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

5. The Court erred in overruling Appellant's thirteenth assignment of error and in holding that the said District Court was authorized by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, to appoint a receiver to take charge of the property of Appellant, because said Act of the Legislature is void and is an *ex post facto* law, in violation of Section 10, Article 1 of the Constitution of the United States, in attempting to confer authority for the appointment of a receiver to take charge of Appellant's property as an incident to, and in aid of, the said judgment of conviction rendered against Appellant on June 1st, 1907, in that the appointment of such receiver has the effect of inflicting an additional punishment upon Appellant, and of increasing the penalties prescribed
83 under the previous laws for acts committed prior to April 11th, 1907.

6. This Court erred in overruling Appellant's ninth assignment of error and in holding that the said District Court was authorized to appoint a receiver to take charge of Appellant's property by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, because under said Act of the Legislature the right to appoint a receiver is limited to actions against corporations, whereas, in a similar suit against an individual charged with violating the same laws, there is no provision made for the appointment of a receiver to take charge of his property, thereby making an arbitrary distinction between persons similarly situated, and rendering said Act of the Legislature unconstitutional and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

7. The Court erred in overruling Appellant's first assignment of error and in holding that the said District Court was authorized to

appoint a receiver to take charge of Appellant's property by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, because the right, if any existed, to appoint a receiver under said Act could be exercised only in an orderly manner upon pleadings setting up the particular grounds upon which such appointment was sought to be made, and showing sufficient reasons for the appointment of a receiver, and because there being no proper pleadings in this cause the appointment of a receiver for Appellant's property was unconstitutional, being in violation of that provision of Section One of the Fourteenth Amendment to the Constitution of the United States which prescribes that no state shall deprive any person of life, liberty or property without due process of law.

8. This Court erred in holding that the said District Court was authorized to appoint a receiver to take charge of Appellant's property by virtue of Sub-division 3, Article 1465, Sayles' Civil Statutes
84 of Texas, which is to the effect that a receiver may be appointed where a corporation has forfeited its corporate rights, because treating, as the Court did, the cancellation of the permit of Appellant to do business in the State of Texas as the forfeiture of the corporate rights of Appellant, such forfeiture was made by virtue of the judgment of said District Court entered June 1st, 1907, in the main suit convicting Appellant of violating the Anti-trust Laws of the State of Texas, and was a part of that judgment; and further, because the Appellant having superseded the execution of said judgment in such a manner that no process could be issued or proceedings had in aid of its enforcement from the date of its rendition, the appointment of the receiver to take charge of Appellant's property was without authority; and because further to sanction and sustain the appointment of the receiver and to hold that said appointment has any legal effect, results in denying to Appellant the benefit and protection which all other litigants enjoy under the laws of the State of Texas by superseding a judgment, and would therefore be unconstitutional and in violation of that part of Section One of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

9. This Court erred in not sustaining Appellant's second proposition under its Fifth Assignment of Error, and its Fourteenth Assignment of Error submitted as a proposition in connection with said Fifth Assignment of Error, wherein Appellant claimed the protection of said Section One of the Fourteenth Amendment to the Constitution of the United States, because of its said bond superseding and staying the execution of the said judgment of June 1st, 1907, rendered against it, and the action of this Court in affirming the judgment of said District Court appointing the receiver, and in holding that said appointment has any legal effect, results in denying to this Appellant the equal protection of the laws, in violation of said Section One of the Fourteenth Amendment to the Constitution of the United States.

10. This Court erred in overruling Appellant's Eleventh Assign-

ment of Error and in holding that the said District Court
85 was authorized by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, to appoint a receiver to take charge of Appellant's property in a suit brought against Appellant to recover fines and penalties for offenses committed in violation of the Anti-trust Laws of the State, as a means of preventing the Appellant from the further or continued violation of such Laws, and the action of said District Court in appointing a receiver for Appellant's property on that ground and for that purpose, as indicated in its finding — the time of the making of said appointment, by virtue of said Act of the Legislature, is in violation of Section One of the Fourteenth Amendment to the Constitution of the United States in that the result of said action, under the said Act of the Legislature, is to deprive Appellant of its property without due process of law and to deny to it the equal protection of the laws.

11. This Court erred in overruling Appellant's Twelfth Assignment of Error and in holding that the said District Court was authorized by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, to appoint a receiver to take charge of Appellant's property without any evidence being introduced before the Court at the time the appointment was made to show that Appellant could not make use of its property and carry on its business in accordance with law, and such action by said District Court so affirmed by this Court results in depriving Appellant of the use of its property for the purpose of conducting an inter-state business guaranteed to it under the provisions of the Constitution of the United States in Paragraph Four, Section Eight, of Article One of said Constitution.

12. This Court erred in holding that Sub-division 3, Article 1465 of the Revised Statutes of the State of Texas has any application to the appointment of the receiver involved in this appeal, because the said Sub-division of said Article has no application to the cancellation of the permit of Appellant as a foreign corporation, and it has the right to continue in possession and enjoy the use of its property after the cancellation of its permit, and may conduct a business protected under the Commerce Clause of the Constitution of the United States, and may sell or remove its property at will,
86 and to deny to it the possession and use of its property for these purposes by the appointment of a receiver to take charge of its property, as was done under the orders of the said District Court and affirmed by the judgment of this Court, results in depriving Appellant of its property without due process of law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States.

13. This Court erred in holding that the appointment of the receiver in this proceeding at the suit of the State was authorized by the said Act of the Legislature of the State of Texas Approved April 11th, 1907, and also under the provisions of Sub-division 3, Article 1465 of the Revised Statutes, independent of the rights of the State as a creditor having a legal interest in Appellant's property, and since the judgment of the State against Appellant was secured by the supersedeas bond given by Appellant upon said judg-

ment, as required by law, the State had no such interest in Appellant's property as to authorize the appointment of a receiver, and both of said statutes, when construed as authorizing the appointment of a receiver for Appellant's property, are unconstitutional, and this action of the Court based thereon results in depriving Appellant of its property without due process of law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States.

14. This Court erred in its findings and conclusions of law in holding that the District Court was authorized at the hearing of the application for the appointment of a receiver in this proceeding, to consider the *the* evidence which was submitted in the main cause, and that the appointment of the receiver herein should be affirmed, based upon the presumption that sufficient evidence was introduced at the hearing of the main cause to show that the interests of the State of Texas required such appointment. This holding on the part of the Court was erroneous because if the trial court could take judicial notice of what occurred in the main cause, this Court is also required to take like notice thereof, and this can only be done by considering the appointment of the receiver in connection with the appeal in the main cause now pending before this court. This
87 holding is also erroneous because the application upon which the appointment was made did not set out any facts showing that the State had any interest requiring the appointment of the receiver beyond the collection of its judgment, and the act of this Court in sustaining the appointment based upon the presumption that something may have been shown at the hearing of the main case, although it was not set out in the application, results in depriving Appellant of its property without due process of law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, and upon each of the foregoing grounds of error committed by this Court, Appellant moves the Court to grant it a rehearing herein, and to set aside and vacate its said judgment affirming the judgment of the District Court of Travis County appointing the said Robert J. Eckhardt receiver of Appellant's property.

Appellant represents that the Honorable R. V. Davidson, who is the Attorney General of the State of Texas, and Jewel P. Lightfoot, an Assistant Attorney General of said State, and T. W. Gregory and R. L. Batts, composing the firm of Gregory & Batts, and George W. Allen and W. D. Hart, composing the firm of Allen & Hart, are the attorneys of record for the Appellee, the State of Texas, and that each of said attorneys resides in Travis County, Texas, and service of this motion is prayed to be had upon one of said attorneys, as required by law.

Respectfully submitted,

CLARK & BOLINGER,
N. A. STEDMAN,
D. W. ODELL,
COCHRAN & PENN,
Attorneys for Appellant.

Appellee hereby accepts service of the above and foregoing motion and waives time and notice.

R. V. DAVIDSON,
Attorney General of Texas.
J. P. LIGHTFOOT,
Assistant Attorney General.
JOHN W. BRADY,
County Att'y, Travis Co.
GREGORY & BATTS,
ALLEN & HART,
Attorneys for the State of Texas, Appellee.

88 (Endorsed:) With app. No. 5668. Mo. 2838. No. 4213. Waters Pierce Oil Co., Appellant *vs.* The State of Texas Appellee. Motion for rehearing by Appellant. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Nov. 2, 1907, R. H. Connerly, Clerk. Filed in Supreme Court Dec. 12, 1907, F. T. Connerly.

Order, Made December 11th, 1907, Overruling Motion for a Rehearing.

Motion 2838. Cause No. 4213.

WATERS PIERCE OIL COMPANY
vs.
STATE OF TEXAS.

Appeal from Travis County.

Motion for a rehearing; the motion is overruled.

89 No. —.

WATERS-PIERCE OIL COMPANY
vs.
THE STATE OF TEXAS.

Pending in the Supreme Court of the State of Texas.

To the Honorable the Supreme Court:

Now comes the State of Texas, by her Attorney-General, and respectfully shows:

1. That heretofore, to-wit, on the first day of June, 1907, a judgment was rendered in the District Court of Travis County, in the case of the State of Texas *vs.* The Waters-Pierce Oil Company, wherein it was adjudged that said company was operating its business within this state contrary to law, and canceling its permit to do business within this state.

2. In said cause judgment was rendered in behalf of the State of Texas for penalties in the sum of $1,623,900.

3. That by virtue of the statute of the State of Texas, the State has a lien upon all of the property and assets of said corporation in this state to secure the payment of said judgment.

4. That the conduct of said business by the Waters-Pierce Oil Company by and through its agents and employés constitutes and is a violation of the penal statutes of this state, and each of said employés and agents of said company will become liable to prosecution for such violation of the penal laws if they should conduct or help to conduct the business of said corporation within this state, or do any act in furtherance of the illegal business of said corporation.

5. That in a proceeding instituted by one Bradley W. Palmer against the Waters-Pierce Oil Company in the Circuit Court of the United States for the Eastern District of Texas, the facts hereinbefore stated were set up and the allegations were therein made that
90 it was necessary that a receiver be appointed to conduct the business of said corporation pending the final disposition of said cause in which said judgment had been rendered, and the following allegations, under oath, were made:

"That by reason of the fact that said oil company have been adjudged to be doing business in violation of the said anti-trust statutes, and is believed by the officials of the State of Texas, and especially the Attorney-General's Department, and some of the courts of the State of Texas, and especially the District Court of Travis County, before whom said cause was tried, that said defendant oil company is and has been doing business in the State of Texas in violation of said anti-trust statutes, and by reason of the provisions of said two acts passed by the 30th legislature, making it a felony punishable by confinement in the penitentiary for any one to have any connection with, or represent in any capacity, a corporation doing business in violation of such anti-trust statutes, your orator avers on information and belief that it will be impossible for said oil company to do and transact any business in the State of Texas after the 12th day of July, 1907, because it will be impossible for it (to) procure any managers, agents, salesmen, representatives or other employés to conduct, carry on or aid in the transaction of its business, because all such persons will be deterred therefrom by reason of the fear that they will be arrested and prosecuted for the commission of a felony, by reason thereof, and thereupon the property and business of said oil company will be left without any care, control or management, unless your Honors will sequestrate said property and appoint a receiver to take charge of the same, and from the time being conduct the business in which said oil company is now engaged, which can be done by the receiver appointed by this court without violating any of the laws of the State of Texas, which is the only method known to your orator of which he can conceive whereby the property and business of said oil company and the value of the stock therein can be preserved."

And the Waters-Pierce Oil Company filed an answer, wherein they admitted that said facts were true, joining in a prayer for the

appointment of a receiver for the protection of its property and for the protection of the employés and agents of the company.

6. That in said cause pending in the District Court of Travis County, a judgment was entered appointing Robert J. Eckhardt, receiver of the properties and business of the Waters-Pierce Oil Company; that a bond was filed by the company superseding said judgment appointing the receiver; that the judgment of said court in appointing said receiver has been affirmed by the Court of
91 Civil Appeals of the Third Supreme Judicial District; that an application has been made by said company for a writ of error to said court complaining of the action of said court in affirming said judgment; that by a judgment this day rendered by this court, it holds that it has jurisdiction of the case in which said judgment appointing said receiver was rendered, and thereby, that it has legal custody and control of the property and business of the Waters-Pierce Oil Company.

7. That it is necessary for the preservation of the property of the Waters-Pierce Oil Company, for the preservation of the security of the State of Texas, for the prevention of the violation of the laws of the State of Texas, for the safety of the persons in charge of the property of the Waters-Pierce Oil Company, and for the prevention of the conduct of a business in violation of the laws of the State, that the property and business of said Waters-Pierce Oil Company be taken into actual control of this court.

Wherefore, the State of Texas prays that this court direct that Robert J. Eckhardt take actual and physical possession of the property of the Waters-Pierce Oil Company and conduct the business of said corporation under such orders as this court may make pending the final disposition of this cause in this court.

R. V. DAVIDSON,
Attorney-General.
JEWEL P. LIGHTFOOT,
Assistant Attorney-General.
JOHN W. BRADY,
County Attorney of Travis County.
GREGORY & BATTS,
ALLEN AND HART,
Attorneys for State of Texas.

92 STATE OF TEXAS, *County of Travis:*

R. V. Davidson, being duly sworn, deposes and says that he has read the foregoing motion and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes them to be true.

R. V. DAVIDSON,
Attorney-General.

[SEAL.]

Sworn to and subscribed before me this the 14th day of December, A. D. 1907.

MILTON HARRIS,
Notary Public, Travis County, Texas.

Endorsed: Mo. No. 1774. No. —. Waters-Pierce Oil Company *vs.* The State of Texas. Motion for Receiver to take charge of the Property. Filed in Supreme Court, December 14, 1907, F. T. Connerly, Clerk, By J. S. Myrick, Deputy. Overruled Dec. 23, 1907.

Amended Application for the Appointment of a Receiver.

Filed December 18, 1907.

No. —.

WATERS-PIERCE OIL COMPANY
vs.
THE STATE OF TEXAS.

Pending in the Supreme Court of the State of Texas.

To the Honorable the Supreme Court:

Now comes the State of Texas, by her Attorney-General, and files this her amended motion in lieu of the original motion filed herein on the 14th day of December, 1907, and respectfully shows:

1. That heretofore, to-wit, on the first day of June, 1907, a judgment was rendered in the District Court of Travis County, in the case of the State of Texas *vs.* the Waters-Pierce Oil Company, wherein it was adjudged that said company was operating its business within this State contrary to law, and cancelling its permit
93 to do business within this State.

2. In said cause judgment was rendered in behalf of the State of Texas for penalties in the sum of $1,623,900.

3. That by virtue of the statute of the State of Texas, the State has a lien upon all property and assets of said corporation in this State to secure the payment of said judgment.

4. That the conduct of said business by the Waters-Pierce Oil Company by and through its agents and employees constitutes and is a violation of the penal statutes of this State, and each of said employees and agents of said company will become liable to prosecution for such violation of the penal laws, if they should conduct or help to conduct the business of said corporation within this State, or do any act in furtherance of the illegal business of said corporation.

5. That in a proceeding instituted by one Bradley W. Palmer against the Waters-Pierce Oil Company in the Circuit Court of the United States for the Eastern District of Texas, the facts hereinbefore stated were set up and the allegations were therein made that it was necessary that a receiver be appointed to conduct the business of said corporation pending the final disposition of said cause in which said judgment had been rendered, and the following allegations, under oath, were made:

"That by reason of the fact that said oil company have been adjudged to be doing business in violation of the said anti-trust

statutes, and is believed by the officials of the State of Texas, and especially the Attorney-General's Department, and some of the courts of the State of Texas, and especially the District Court of Travis County, before whom said cause was tried, that said defendant oil company is and has been doing business in the State of Texas in violation of said anti-trust statutes, and by reason of the provisions of said two acts passed by the 30th Legislature, making it a felony punishable by confinement in the penitentiary for any one to have any connection with, or represent in any capacity, a corporation doing business in violation of such anti-trust statutes, your orator avers on information and belief that it will be impossible for said oil company to do and transact any business in the State
94 of Texas after the 12th day of July, 1907, because it will be impossible for it (to) procure any managers, agents, salesmen, representatives or other employees to conduct, carry on or aid in the transaction of its business, because all such persons will be deterred therefrom by reason of the fear that they will be arrested and prosecuted for the commission of a felony, by reason thereof, and thereupon the property and business of said oil company will be left without any care, control or management, unless your Honors will sequestrate said property and appoint a receiver to take charge of the same, and from the time being conduct the business in which said oil company is now engaged, which can be done by the receiver appointed by this court without violating any of the laws of the State of Texas, which is the only method known to your orator of which he can conceive whereby the property and business of said oil company and the value of the stock therein can be preserved."

And the Waters-Pierce Oil Company filed an answer, wherein they admitted that said facts were true, joining in a prayer for the appointment of a receiver for the protection of its property and for the protection of the employees and agents of the company.

6. That upon the foregoing application the said Circuit Court of the United States made an order appointing a receiver, who qualified and took immediate possession of all the property of the said Waters-Pierce Oil Company situated in the State of Texas; and thereupon the State of Texas, and Robert J. Eckhardt, who had been, by the District Court of Travis County, Texas, appointed receiver for all the property of the Waters-Pierce Oil Company situated within the State of Texas, acting under instructions from the Honorable Court of Civil Appeals for the Third Supreme Judicial District, in which latter court the controversy was then pending, applied to said Circuit Court of the United States for an order vacating the order appointing a receiver, and restoring the property of the said Waters-Pierce Oil Company to the custody and control of the State Courts. That upon a hearing of said application, the said Circuit Court refused to vacate said order appointing a receiver, and declined to discharge such receiver so appointed; and thereupon the State of Texas and the said Eckhardt prosecuted an appeal to
95 the United States Circuit Court of Appeals for the Fifth Circuit, which latter court reversed and vacated the order of the Circuit Court appointing a Receiver, and ordered said latter court to

discharge the receiver named by it. That the said judgment so reversing and vacating said order has become a final judgment, and the mandate from said Circuit Court of Appeals has been filed in the said Circuit Court. That said Circuit Court has indicated that it would immediately discharge its receiver, if there was a receiver appointed by the State Court ready and able to take possession of the said property. That the effect of the holding and decision of the Circuit Court of Appeals was, that neither the Circuit Court of the United States for the Eastern District of Texas nor any other court, except the District Court of Travis County and the courts to which the cause of action might be carried in a regular way by appeal or writ of error, had or have any jurisdiction whatever over the property in controversy or any right to interfere with the said State Courts in the custody and control of the said property, and the further effect of said holding is technically to make the receiver appointed by the said Circuit Court a naked trespasser so far as the State of Texas and the Waters-Pierce Oil Company are concerned in relation to said property of the Waters-Pierce Oil Company situated within the State of Texas. That the Judge presiding in said Circuit Court has stated in open court that he would make an order in compliance with said mandate from the Circuit Court of Appeals directing his said receiver to forthwith make an inventory of the property in his custody and control by virtue of the said appointment, and to make up his account after paying out of the property of the Waters-Pierce Oil Company all liabilities incurred by said receiver, and to state his account in regard thereto, and that upon the coming in of such inventory and account, he would dis-
96 charge his receiver and instruct him to turn loose the possession of the property. That the Waters-Pierce Oil Company, which the Circuit Court of Appeals has held was the legal custodian of said property under the supersedeas bond given in this cause, stated in open court in reply to the above suggestions that it was not ready or willing to take said property at this time; that it had no agents in the State of Texas; did not have a single representative in the State to take charge or possession of it, and the State is informed and believes and so charges the fact to be that it can get no agent who is willing to hold the property and conduct and carry on the business of the company, on account of the matters and things hereinbefore alleged. That under and by virtue of the order made by the District Court of Travis County, Texas, appointing a receiver for the property of the Waters-Pierce Oil Company and an injunction issued by it restraining the Waters-Pierce Oil Company from removing its property beyond the limits of the State of Texas, the said Waters-Pierce Oil Company or any person acting for or on its behalf or with its consent is prohibited from removing any property beyond the limits of the State, and the statutes and the obligation of its supersedeas bond given in this cause requires it to keep all of said property within the State of Texas subject to the orders and instructions of this court. That by reason of the taking possession of said property by a foreign receiver in a foreign jurisdiction with the consent and connivance of the Waters-Pierce Oil Com-

pany, a great deal of the property involved in this controversy has been changed in substance and in form; that many thousands of dollars worth of property has been sold and converted into money and the money in turn used in the purchase of other property; that many obligations have been incurred by the said receiver of a foreign jurisdiction, which it is claimed will be a charge and
97 lien upon said property that the State Courts are entitled to control and preserve; that many obligations are daily being incurred which it is claimed are a charge and lien upon said property, and the said property is being changed in form and character to such an extent that it cannot be traced or followed up and is, therefore, put beyond the reach of this court and the other State Courts, in case the judgment appointing a receiver is affirmed; that the said Waters-Pierce Oil Company, by virtue of its consent and connivance at said proceeding in said Circuit Court for the Eastern District of Texas has put it beyond it- power to carry out or abide by the decision of the court in case it should be against it in this cause, in so far as a large part of the property is concerned, that it had in its possession and control in the State of Texas at the time the receiver was appointed by the State Court and the injunction granted therein. That it will be further put beyond its power and control, if a receiver is not appointed or authorized by this court to take charge of said property; that the State is informed and believes and so charges that a large part of the corpus of the property over which the State Courts have exclusive control have been used in the payment of liabilities incurred by the receiver appointed by the Federal Court, including compensation to the said receiver and to his attorney and other agents and employees of the said Receiver, and that this is in violation of the rights of the State to have all of said property kept intact in accordance with the law and obligations arising by virtue of the above set out proceeding and the supersedeas bond given by the Waters-Pierce Oil Company herein, as well as in violation of the judgment, sentence and decree of the Circuit Court of Appeals reversing and vacating said order. That all of the acts and things done by the Circuit Court, as above set out, are in direct violation of and an infringement of the
98 prerogatives of this court and the other courts to which this cause has or may go upon appeal.

That the State of Texas is asserting a lien upon all of the property of the Waters-Pierce Oil Company situated within the State of Texas to secure the State in the payment of penalties for violating the anti-trust law for the period of time covering about seven years or more than seven years; that if the judgment recovered for penalties and forfeiture of franchise should be reversed by the Court of Civil Appeals or this court or the Supreme Court of the United States, that it would then be within the power of the Waters-Pierce Oil Company to quickly dispose of its entire holdings, such holdings being largely personal property, or convert the same into money as a great deal of it has been converted and is being converted, and remove the same beyond the limits of the State, and the State would be without a remedy to enforce any judgment that it

might thereafter obtain, unless a receiver or custodian is appointed by this court, or this court direct the receiver heretofore appointed and qualified in the District Court, to take charge of said property; that on account of the recall by this court of the mandate issued by the court of Civil Appeals, the said Robert J. Eckhardt's powers are suspended pending the final disposition of the cause in this court, and the said Eckhardt nor no other receiver appointed by any court, except this court, can legally take possession of or control said property, pending the final disposition of the case in this court, and that, as above stated, the rights of all parties and, especially, the State of Texas are liable to be greatly jeopardized and the property wasted and dissipated and changed and misappropriated.

7. That in said cause pending in the District Court of Travis County, a judgment was entered appointing Robert J. Eckhardt receiver of the properties and business of the Waters-Pierce Oil
99 Company; that a bond was filed by the company superseding said judgment appointing the receiver; that the judgment of said court in appointing said receiver has been affirmed by the Court of Civil Appeals of the Third Supreme Judicial District; that an application has been made to this court by said company for a writ of error to said court complaining of the action of said court in affirming said judgment; that by a judgment rendered by this court, it holds that it has jurisdiction of the case in which said judgment appointing said receiver was rendered, and thereby, that it has legal custody and control of the property and business of the Waters-Pierce Oil Company.

8. That it is necessary for the preservation of the property of the Waters-Pierce Oil Company, for the preservation of the security of the State of Texas, for the prevention of the violation of the laws of the State of Texas, for the safety of the persons in charge of the property of the Waters-Pierce Oil Company, and for the prevention of the conduct of a business in violation of the laws of the State, that the property and business of said Waters-Pierce Oil Company be taken into actual control of this court.

Wherefore, the State of Texas prays that this court revoke its order recalling the mandate of the Court of Civil Appeals or direct that Robert J. Eckhardt take actual and physical possession of the property of the Waters-Pierce Oil Company and conduct the business of said corporation under such orders as this court may make pending the final disposition of this cause in this court, and for general relief.

R. V. DAVIDSON,
Attorney-General.
JEWEL P. LIGHTFOOT,
Assistant Attorney-General.
JOHN W. BRADY,
County Attorney of Travis County.
100 GREGORY & BATTS,
ALLEN & HART,
Attorneys for State of Texas.

THE STATE OF TEXAS, *County of Travis:*

J. P. Lightfoot, being duly sworn, deposes and says, that he has read the foregoing motion and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes them to be true.

[SEAL.] J. P. LIGHTFOOT.

Sworn to and subscribed before me this the 17th day of December, A. D. 1907.

MILTON HARRIS,
Notary Public, Travis County, Tex.

(Endorsed:) With Mo. No. 1774. Waters-Pierce Oil Co. *vs.* The State of Texas. Amended Application for the Appointment of a Receiver. Filed in Supreme Court of Texas, Dec'r 18, 1907. F. T. Connerly, Clerk.

CLERK'S OFFICE SUPREME COURT.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above and foregoing eleven pages contain a true and correct copy of the original motion and a true and correct copy of the amended motion for the appointment of a Receiver, filed in this court respectively, Dec. 14th, 1907 and Dec. 18th, 1907 in motion No. 1774, Waters Pierce Oil Company *vs.* The State of Texas, and now on file in this office. Witness my hand and the seal of said court at the City of Austin, this the 3rd day of April, A. D. 1908.

[SEAL.] F. T. CONNERLY,
Clerk of the Supreme Court of Texas.

(Endorsed:) Mo. No. 1774. Waters Pierce Oil Co. *vs.* The State of Texas. Certified copy of original and amended motion. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, April 13, 1908. R. H. Connerly, Clerk.

101 *Opinion.*

Filed Dec. 23rd, 1907.

No. 1774.

WATERS-PIERCE OIL COMPANY, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.

From Travis County, Third District.

In this opinion we will give our reasons for the disposition made on a former day of this term of a motion presented by the Waters-

Pierce Oil Company on substantially the following statement of facts.

The Waters-Pierce Oil Company is a corporation created under the laws of the State of Missouri, which had been admitted by the authorities of this state to transact business in Texas under a permit duly issued. The state instituted suit in the district court of Travis County against the said Oil Company to forfeit its permit to do business in this state and also to recover from it penalties for the violation of the anti-trust statutes of the state of Texas. Upon a trial in the district court the state recovered judgment for $1,623,000.00 as penalties and declared the permit of the company to do business in this state forfeited. On a subsequent day to the judgment and during the term the Judge of the district court, upon motion of the state, appointed Robert J. Eckhardt receiver for the said corporation. After a motion for new trial had been overruled in that proceeding and also in the main case the Oil Company gave notice of appeal in the original case as well as in the proceedings for appointment of receiver and executed a bond in the main case according to law in double the amount of the judgment, and in the proceedings under the motion of the state for appointment of receiver a bond was given in the amount prescribed by the Judge of the district court, conditioned as required by law for a super-
102 sedeas bond. Two records were filed in the Court of Civil Appeals, one embracing both the main case and the motion for the appointment of a receiver and the other embracing only the proceedings upon the motion of the State for the appointment of a receiver. In the Court of Civil Appeals the Waters-Pierce Oil Company moved to consolidate the cases, which motion was by that court denied, and the judgment of the district court, appointing a receiver, was affirmed. Motion for rehearing of that judgment in the Court of Civil Appeals was filed in due time and by the court overruled. On the same day a mandate was issued by the clerk of the court of Civil Appeals and transmitted to the clerk of the District Court of Travis County, Texas. The judge of the district court entered an order based upon the mandate directing Eckhardt to proceed as receiver to discharge his duties. The Waters-Pierce Oil Company filed in the Court of Civil Appeals and presented to this court within the time prescribed by law a petition for writ of error, which is now pending before this court. The Waters-Pierce Oil Company filed in this court a motion setting up the facts before stated and praying that this court enter an order directing the clerk of the Court of Civil Appeals to recall the mandate sent by him to the clerk of the district court, and also directing the judge of the district court to vacate an order which he had entered upon receipt of that mandate directing the receiver to take charge of the property. At a former day of this term, on hearing the motion, this court directed the clerk of the Court of Civil Appeals to recall the mandate sent down by him to the district court, and also directed the Honorable Judge of the District Court to set aside the order made by him upon receipt of the said mandate.

After this court granted the motion to recall the mandate issued

by the Court of Civil Appeals to the District Court, the State of Texas, by her Attorney General, filed in this court a motion
103 reciting the facts before stated and added the following grounds upon which the motion rested. (1) That it was adjudged by the district court that the Waters-Pierce Oil Company was conducting its business in violation of the law, and that the said judgment cancelled the permit of the company to do business on this state. (2) That judgment had been entered in favor of the State of Texas against the said company for $1,623,000.00. (3) That the State has a lien upon all of the property of the said company within this State to secure payment of the said judgment. (4) That conducting the business of the Waters-Pierce Oil Company by that company or its agents in the State would be in violation of the penal laws of this State. (5) That in a proceeding in the United States Circuit Court, wherein Bradley W. Palmer, one of the Stockholders of the company, was the plaintiff, C. B. Dorchester was appointed receiver for the said company and took possession of the property and that upon appeal by the State, the Circuit Court of Appeals of the United States decided that the Circuit Court did not have jurisdiction and ordered the Circuit Court to discharge the receiver. (6) The motion sets out the facts of the proceeding of the Circuit Court of the United States, which are not necessary to this statement. It is alleged in the said motion that the property, while in the hands of Dorchester and under the orders of the Circuit Court of the United States, was applied to the payment of the expenses of that administration and the debts contracted by the receiver, and the other property or proceeds thereof would be hereafter so applied to the detriment of the State and the impairment of its lien. That in case the property should be returned to the possession of the Waters-Pierce Oil Company it would be liable to be wasted or removed from the State. The motion also set up that the Judge of the Circuit Court of the United States had declared that he would discharge the receiver in accordance with the mandate
104 of the Circuit Court of Appeals of the United States, and that in case he should do so there is no person to receive the property and take control of it and transact the business, as the operation of the business by the Waters-Pierce Oil Company in this State would be unlawful. The motion concludes then in the following language: "That it is necessary for the preservation of the property of the Waters-Pierce Oil Company, for the preservation of the property of the Waters-Pierce Oil Company, for the preservation of the security of the State of Texas, for the prevention of the violation of the laws of the State of Texas, for the safety of the persons in charge of the property of the Waters-Pierce Oil Company, and for the prevention of the conduct of a business in violation of the laws of the State, that the property and business of said Waters-Pierce Oil Company be taken into actual control of this court.

"Wherefore, the State of Texas prays that this court revoke the order recalling the mandate of the Court of Civil Appeals or direct that Robert J. Eckhardt take actual and physical possession of the property of the Waters-Pierce Oil Company and conduct the busi-

ness of said corporation under such orders as this court may make pending the final disposition of this cause in this court, and for general relief."

On the hearing of the motion of Waters-Pierce Oil Company to recall the mandate of the Court of Civil Appeals from the District Court it was objected by counsel for the State that if the Waters-Pierce Oil Company be correct in its contention that this was not an independent suit but only an incident of the main controversy, a writ of error could not be separately prosecuted, therefore, the case was not properly before this court. It is sometimes the case that there may be more than one appeal in the same case
105 when orders are made at different times which finally dispose of the subject matter of that particular order. A familiar instance is a case of partition wherein there may be a decree which determines the rights of the parties in the property and is a final judgment upon the merits of the case. From this an appeal may be taken leaving the case before the court for the purpose of actual division of the property among the claimants according to the decree entered. When the partition shall have been made and the decree of partition entered there is another final judgment or order from which an appeal may likewise be taken. (White *v.* Mitchell, 60 Tex., 164; Moor *v.* Moor, 63 S. W., 357.)

The order appointing the receiver, although made subsequently to the date of the judgment but at the same term, might have been reviewed in the appeal of the principal case. The parties have treated this as a separate proceeding presenting separate records to the Court of Civil Appeals and that court has passed upon it as a separate and distinct case from the main suit, but the separation of the two can not deprive appellant of the benefit of a review of the order; this court has jurisdiction of the case as it is presented.

It is also objected by the State's counsel that this court has no jurisdiction of this branch of the proceeding, because the order appointing the receiver is an interlocutory order, and this court has jurisdiction only of final judgments of the Court of Civil Appeals. If this be an interlocutory order, then the objection is well taken, for this court has no jurisdiction to review such an order of the district court and of the court of Civil Appeals. Mr. Freeman defines an interlocutory judgment in the following language: "An interlocutory decree is one made pending the cause and before the hearing on the merits." (Freeman on Judgments, Sec. 29.) This definition has been approved by this court in the case of Linn
106 *v.* Arambou[illegible] (55 Tex., 611). Mr. Freeman defines a final decree as foll[illegible]: "A final decree is one which disposes of the cause either by sending it out of the court before a hearing is had on the merits, or after a hearing on the merits, decreeing either in favor of or against the prayer of the bill." The order clearly comes within the definition of a final decree or order, for so far as the defendant was concerned, it finally disposed of the matter then before the court, which was, the appointment of a receiver to take the property into his custody as a consequence of the complete determination of the controversy. If the contention were sustained, the de-

fendant would be deprived of the right to have that order reviewed by this court. (Art. 1383, Rev. Stat.; Renn. *v.* Ramos, 42 Tex. 104; Shulte *v.* Huffman, 18 Tex., 678; Fitts *v.* Fitts, 14 Tex. 443; Watson *v.* McKinnon, 73 Tex., 215; Carter *v.* Hightower, 79 Tex., 135.) In each of the cases just cited a receiver had been appointed in the trial court and this court entertained jurisdiction of the matter and passed upon the questions raised as follows: In Fitts *v.* Fitts, the appointment was made in the final decree, and, for the purpose of enforcing it, objection was made to the appointment of the receiver, but the court affirmed that judgment. In Schulte *v.* Huffman, the appointment of a receiver was made to carry out the final judgment of the court, and, upon objection being made, the Supreme Court affirmed the judgment of the district court making the appointment. In Watson *v.* McKinnon, the trial court refused to make the appointment of a receiver and, upon appeal, complaint was made of that refusal, which action the Supreme Court reviewed and reversed. If the order of the court refusing the appointment of a receiver was subject to review by the Supreme Court, certainly an order by which a receiver was appointed would be likewise subject to review. In Carter Bros. *v.* Hightower, a receiver was ap-
107 pointed by the trial court, of which complaint was made upon appeal. This court reviewed the action of the trial court in making the appointment and affirmed the order. At the time those cases were passed upon by the Supreme Court it had no authority to review an interlocutory order of any kind, and, while the question was not made in either of the cases, the action of the Supreme Court necessarily involved the proposition that the court regarded the order as being final, else it would not have had jurisdiction to enter the orders concerning the appointment that were made in that court. We regard these cases as strongly supporting our ruling in maintaining jurisdiction of this court over the order of the district court in making the appointment of a receiver in this court.

The affirmance of that order being a final judgment of the Court of Civil Appeals, this court had jurisdiction by writ of error to review the proceedings of the courts in that matter, and, the appellant in the Court of Civil Appeals having a right to present to this court an application for writ of error, the clerk of that court had no authority to issue the mandate on the judgment of the Court of Civil Appeals until the expiration of the time allowed by law for the filing of an application for writ of error in that court. The application for writ of error having been presented in this court it was necessary that the mandate of the Court of Civil Appeals, which was prematurely issued, should be returned to that court to await the action and judgment of the Supreme Court. We therefore held that the appellant is entitled under its motion to have an order directing the clerk of the Court of Civil Appeals to recall the mandate and also directing the judge of the district court to set aside the order which he had made based upon that mandate. In passing upon that motion we have confined ourselves strictly to the question of the right of this court to entertain jurisdiction of the ap-
108 plication filed with it and the power of the court to direct the recall of the mandate. That decision in no wise interferes

with any authority that the district court or the receiver could lawfully exercise over the property of the Oil Company during the pendency of that appeal.

Upon the motion of the Attorney General requesting this court to appoint a receiver in this case it is insisted by counsel that this court has jurisdiction of the matter because the appeal which was taken from the order appointing the receiver is void, the bond not having been given in double the amount in controversy. It is also claimed that there is no bond prescribed by the statute which will apply to an appeal from this order. Article 1388, Revised Statutes, provides: "An appeal or writ of error may be taken to the Court of Civil Appeals from every final judgment of the district court in civil cases." The order in question is a final judgment of the district court from which an appeal might be taken under the provisions of the above quoted article. If the statute prescribes no bond, then we are of the opinion that the court granting an appeal under this provision of the law might fix the amount of the bond adequate for the protection of the rights of the parties, which the court here did. However, if it were held that this case must rest upon the bond given therein and that it should be for a sum double the amount of the judgment, the appeal would not be void, because the bond could have been amended upon objection made in the Court of Civil Appeals. The objection not having been made in the Court of Civil Appeals as to the amount of the bond, nor any effort made to dismiss the appeal on that account, the objection comes too late in this proceeding.

The effect of the appeal when perfected is prescribed by Article 1404, Revised Statutes, in these words: "Should the appel-
169 lant or plaintiff in error, as the case may be, desire to suspend the execution of the judgment, he may do so by giving, instead of the bond or affidavit in lieu thereof, mentioned in the four preceding articles, or in addition to such bond, a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to appellee or defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect, and in case the judgment of the Supreme Court or the court of civil appeals shall be against him, he shall perform its judgment, sentence or decree, and pay all such damages as said court may award against him." This is plain language that can not be construed, because its meaning is as definite as could be expressed to the effect that when the appellant or plaintiff in error complies with the law the judgment can not be enforced during the pendency of the appeal. It only needs to be said that the law applies to this case and the enforcement of the order appointing the receiver was suspended by the appeal. (Williams *v.* Pouns, 48 Tex., 141; Street Ry. Co. *v.* Street Ry. Co., 68 Tex., 163; G. C. & S. F. Ry. Co. *v.* Ft. W. & N. O. Ry. Co. 2 S. W. 199; Griffin *v.* Wakelee, 42 Tex., 513; Stone *v.* Spillman, 16 Tex. 432; Beach on Receivers, Sec. 117.)

This court has no power to direct or authorize Eckhardt to take

charge of the property of the defendant company when the statute expressly provides that the giving of the appeal bond shall suspend the action of the court in that regard. If the appeal did not have the effect to suspend the execution of the order, the judge had authority to limit the appointment as he did by his order in which it is thus expressed: "And now on this the 15th day of June, 1907, in open court it is ordered by the court in the above cause, that
110 $100,000.00 be and the same is hereby fixed as the amount of bond which the defendant shall be required to give in order to supersede the judgment of the court placing defendant's property in the hands of a receiver; and,

"It is further ordered that upon the approval by the court and the filing with the clerk by defendant of a good and sufficient bond conditioned as required by law for said amount, further proceedings herein be suspended pending appeal.

"But this order shall not effect or rescind the order heretofore entered prohibiting and enjoining the defendant, its servants, officers, agents and attorneys from removing any of its property or assets beyond the limits of the State of Texas, but said injunction shall remain in full force and effect pending the appeal from the order appointing a receiver herein." We do not, however, intimate a doubt upon the proposition which we have asserted, that the appeal by the filing of the bonds by the defendant in that court suspended the operation of the order appointing the receiver until the final decision of the case.

The State, by her Attorney General, moves this court to appoint a receiver to take actual possession of the property of the Waters-Pierce Oil Company. This involves an inquiry into the scope of the powers which the constitution has granted to this court, and an inquiry as to whether the act which is requested of this court would constitute the exercise of appellate or of original jurisdiction. Section 3 of Article V of the Constitution defines the powers of the Supreme Court in the following terms: "The Supreme Court shall have appellate jurisdiction only, except as herein specified, which shall be coextensive with the limits of the State. Its appellate jurisdiction shall extend to questions of law arising in cases of
111 which the courts of civil appeals have appellate jurisdiction, under such restrictions and regulations as the legislature may prescribe. * * * The legislature may confer original jurisdiction on the Supreme Court to issue writs of *quo warranto* and *mandamus* in such cases as may be specified, except as against the Governor of the State." In pursuance of the authority granted by the constitution the legislature has defined the appellate jurisdiction of the Supreme Court in this language: "The Supreme Court shall have appellate jurisdiction coextensive with the limits of the State which shall extend to questions of law arising in civil cases in which the courts of civil appeals have appellate but not final jurisdiction." It is unnecessary for us to enumerate the different provisions of the statutes which limit and further define the jurisdiction of this court within the general terms hereinbefore copied. The legislature has defined the original jurisdiction of this

court as follows: "The Supreme Court or any justice thereof shall have power in term time or vacation to issue the writs of *quo warranto or mandamus* against any district judge or officer of the state government, except the governor of the state." The legislature has also specified the cases in which the Supreme Court may issue writs of *habeas corpus*, but it is unnecessary to quote or cite the statute.

In Brownsville *v.* Basse, 43 Tex., 449, this court defined appellate jurisdiction as follows: "Appellate jurisdiction, with which alone this court is invested in passing upon civil causes, is defined to be the power and authority conferred upon a superior court to rehear and determine causes which have been tried in inferior courts."

By the application of this definition of appellate jurisdiction and the statutory provisions as to the original jurisdiction of this court we must ascertain whether the act of making the requested
112 appointment is embraced in either the appellate or original jurisdiction of this court. It is manifest that the act of appointing a receiver to take charge of the property of the Waters-Pierce Oil Company would not come within the terms of the statute which confer upon this court original jurisdiction in the use of the writs of *quo warranto* and *mandamus* for by neither of these writs could the appointment be made. The conclusion is absolute that if the original jurisdiction of this court must be invoked to make the appointment sought, then the court is without power to grant the motion. It would be a waste of words and time to argue a proposition so self-evident.

Can the prayer of the motion be granted by the exercise of the appellate jurisdiction of this court? Looking to the clear definition of our powers by the constitution, by the statute law and by the decision of the court above quoted, this court has no authority over this matter, unless it be in the exercise of its revisory authority whereby some ruling made, and order or judgment entered by the trial court or by the Court of Civil Appeals in its proceedings in this case is brought under review. It is not claimed that the trial court committed any error in the appointment of a receiver for the Waters-Pierce Oil Company, nor that the Court of Civil Appeals erred in the affirmance of that judgment, and the State does not seek to revise, reverse or set aside any order, judgment or decree rendered by the district court or any action taken therein by the Court of Civil Appeals. It is therefore certain to the point of demonstration that the power to make the appointment does not come within the appellate jurisdiction and authority of this court over the case, unless it is brought within the rule which is well expressed in these terms. "Every regularly constituted court has inherent power to do all things that are reasonably neces-
113 sary for the administration of justice within the scope of its jurisdiction and to prevent any abuse of its process." (8 Am. & Eng. Ency. Law, 28.) The powers of the receiver being suspended by the appeal taken by the Waters-Pierce Oil Company we must inquire in what manner that company is interfering with the exercise by this court of its lawful powers in the revision of the pro-

ceedings in that case. If it were made to appear that a receiver in the active discharge of his duties was necessary to enable this court to exercise its authority over the case and to revise the action and ruling of the inferior courts, we do not doubt that this court would have the power to appoint a receiver in order to enable it to perform its duties of revising and correcting whatever errors might be made to appear in the proceedings of the lower courts. Nor would this court hesitate to exercise the implied or inherent power arising from its constitutional authority if the facts presented made such a case. Accepting as true the allegations of the motion made in this case that the Waters-Pierce Oil Company, if permitted to use the property, will violate the laws of the State of Texas, and that the safety of the persons in charge of the property of the Waters-Pierce Oil Company would be endangered by conducting the business in violation of the laws, we must inquire if either of those acts would in any manner interfere with this court in discharging its duty of revision as an appellate court. We are not able to see wherein the action of the Supreme Court would be affected by such conditions. If in the use of its property the Waters-Pierce Oil Company should violate the laws of the State during the pendency of its appeal it would be liable to prosecution and punishment in the same manner as for acts done before the trial of this case, and if the safety of the persons in charge of the property is endangered in any manner the courts are open to them to seek their protection where the jurisdiction
114 has been lodged by the constitution of this State for such purposes. The trial court has no less power now to prevent a violation of the laws of this State by the conducting of the business of the Waters-Pierce Oil Company than it had before the trial. As none of these things would in any way interfere with this court in the discharge of its duty, they do not fall within the scope of its appellate jurisdiction, therefore do not come within the scope of the jurisdiction of this court. It is also said that it is necessary in order to preserve the security that the State of Texas has for the collection of its judgment to have a receiver in custody of the property, but no facts are stated which show that there is any threatened invasion of the jurisdiction of this court by which that security would be impaired. The law provides for a bond as security for the State in the collection of its judgment, and we are authorized to presume that a solvent bond has been taken by the trial court, and the law having prescribed a sum double the amount of the judgment rendered, we must conclude that it would afford security to the State in the enforcement of its judgment. This court will presume that all of these things have been properly done, and, indeed, if they were not, they are not matters over which this courts has appellate jurisdiction.

In argument counsel appealed to this court to interfere, because it was asserted that in case this court or the Supreme Court of the United States should reverse the judgment which the State obtained in the district court, then the Waters-Pierce Oil Company would be enabled to dispose of its property and evade the collection of the penalties and fines which the State has a right to recover

against it. This court cannot indulge the presumption that the law will be violated or that either this court or the Supreme Court of the United States will reverse a judgment which comes to
115 this court with the presumption in favor of its correctness. Such a condition of things, if it should ever exist, must arise necessarily after the time when the jurisdiction of this court over the subject matter will have ceased. The Supreme Court is not called upon by this motion to preserve the status of the case as it existed after the proceedings in the trial court and Court of Civil Appeals, but to change that status and put the affairs of this company and this litigation in an entirely different attitude from that in which by the lawful proceedings of the courts we find it. The questions decided by the Circuit Court of Appeals of the United States are not involved in this proceeding and nothing in this opinion is intended to antagonize the conclusions reached by that court.

The purpose of this motion is to have this court create new conditions—to change the status fixed by the trial court, which this court has no power to do. (Laredo *v.* Martin, 52 Tex., 554.) In the case cited an injunction had been refused by the trial court and application was made to the Supreme Court for an injunction which the court refused, saying: "The issuance of an injunction for such a purpose would be the exercise of original, and not appellate, jurisdiction in the case. It would be doing that which, it is contended, the district court should have done before the trial. * * * It could not, then, have been contemplated to give this court power to issue an injunction, in the first instance, to prevent damage to the parties during the pendency of this suit." If the receiver had been in possession of the property when the appeal was taken, this court would have power to maintain that possession during the pendency of the case in this court. (Havermeyer *v.* Superior Court, 84 Cal., 327; G. C. & S. F. Ry. Co. *v.* Ft. W. & N. O. Ry. Co., 68 Tex., 98.)

116 Without further discussion of the question it is sufficient for us to say that this court has not been entrusted with any such unlimited authority and cannot and will not exercise authority which has not been delegated to it by the people of this State.

The motion is overruled.

T. J. BROWN,
Associate Justice.

(Endorsed:) Mo. No. 1774. Waters-Pierce Oil Co. *vs.* The State of Texas. Opinion. Filed in Supreme Court Dec. 23rd, 1907. F. T. Connerly, Clerk, By J. S. Myrick, Deputy. Associate Justice Brown. Overruled.

CLERK'S OFFICE, SUPREME COURT.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above and foregoing fifteen pages contain a true and correct copy of the original Opinion of the Supreme Court of Texas, in motion No. 1774, Waters Pierce Oil Company, *vs.* The State of Texas, now on file in this office. Witness my hand and the seal of

said court at the City of Austin, this the 3rd day of April, A. D. 1908.

[SEAL.] F. T. CONNERLY,
Clerk Supreme Court of Texas.

(Endorsed:) Mo. No. 1774. Waters Pierce Oil Company *vs.* The State of Texas. Certified copy of Opinion of Supreme Court of Texas. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas. Apr. 13 1908. R. H. Connerly, Clerk.

117 *Judgment of Supreme Court of Texas Refusing Application for Writ of Error, Rendered February 26th, 1908.*

In Supreme Court of Texas.

WATERS PIERCE OIL CO.
vs.
THE STATE OF TEXAS.

From Travis County, 3rd District.

FEBRUARY, 26TH, 1908.

This day came on to be heard the application of Waters Pierce Oil Co., for a writ of error to the Court of Civil Appeals for the Third District, and the same having been duly considered, it is ordered that said application be refused; that the applicant Waters Pierce Oil Company and its surety American Surety Company of New York pay all costs incurred on this application.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by the Supreme Court on the application for writ of error in the above styled cause. Witness my hand and the seal of said court this the 26th day of March A. D. 1908.

[Seal of Supreme Court of Texas.]

F. T. CONNERLY, *Clerk*,
By J. S. MYRICK, *Deputy*.

Motion for rehearing overruled March 25th, 1908.

(Endorsed:) Application No. 5668. Waters Pierce Oil Co. *vs.* The State of Texas. Copy of Judgment in Supreme Court. Application for writ of error. Refused. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Mar. 26, 1908. R. H. Connerly, Clerk.

118 *Bill of Costs in Supreme Court of Texas.*

CLERK'S OFFICE, SUPREME COURT.

No. 5668.

WATERS PIERCE OIL COMPANY
vs.
THE STATE OF TEXAS.

Certified Copy Bill of Costs, Supreme Court.

Filing Application	.50
Docketing petition	.50
Entering appearance of counsel	.50
Filing two briefs	.60
Filing three papers	.90
Entering orders	1.00
Entering judgment on application	1.00
Certified copy of judgment	1.00
Taxing costs of application	.50
Certified copy bill of costs	1.00
Filing and entering motion	.55
Total	$8.05

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above copy of the original bill of costs is true and correct. Witness my hand and seal of said court, at Austin, this the 26th day of March, 1908.

F. T. CONNERLY, *Clerk.*

(Endorsed:) Application No. 5668. Certified copy Bill of Costs in Supreme Court, Austin. Waters Pierce Oil Co. *vs.* The State of Texas. $8.05. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas. Mar. 26, 1908. R. H. Connerly, Clerk.

119 *Bill of Costs in Court of Civil Appeals.*

No. 4213.

WATERS PIERCE OIL COMPANY
vs.
THE STATE OF TEXAS.

Appeal from Travis County.

Filing record	.50
Docketing cause	.50
Appearances	1.00

Filing briefs	.80
Filing and entering 3 motions	1.05
Orders	4.50
Filing 29 extra papers	2.90
Continuance	.20
Judgment	1.00
Taxing costs	.50
Issuing 2 mandates	2.00
Recording opinion	2.00
Certified copy bill of costs	.75
Notices, 34, @ 50¢	17.00
Copy of orders to Supreme Court	2.00
Certified copy of order to lower court	.75
Costs of State Supreme Court	8.05
Copy of Motion	3.50
Issuing 1 precept	1.00
Sheriff's fees	1.00
Transcript fee to U. S. Sup. Court	77.00
Total	$128.00

120 In the Supreme Court of the United States.

Between—

THE WATERS-PIERCE OIL COMPANY (Defendant), Plaintiff in Error,
and
THE STATE OF TEXAS (Plaintiff), Defendant in Error.

Assignment of Errors.

The defendant the said Waters-Pierce Oil Company says that in the record and proceedings aforesaid and in giving and affirming the judgment aforesaid of the District Court and in the order appointing a receiver as a consequence of the said judgment there is manifest error in this to-wit

1. That it was decided in and by the said judgment that the defendant the Waters-Pierce Oil Company which was incorporated under the laws of Missouri on the 29th May 1900 and not before was liable to the penalties imposed by the statute of 1903 in the record mentioned for and on account of the acts of the Standard Oil Company in acquiring a majority of the shares of the Waters-Pierce Oil Company before the said statute of 1903 was passed or took effect which acts were not done in the state of Texas. And by means thereof the defendant the Waters-Pierce Oil Company is thereby deprived of its property without due process of law. And it was also thereby decided that the said statute of 1903 was valid and not repugnant to the Constitution of the United States whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provisions of

the said Constitution forbidding the passage of any *ex post facto* law by any state.

2. There is also manifest error in this that it was decided in and by the said judgment that the said Waters-Pierce Oil Company was liable to the penalties imposed by the statute of 1899 in the record mentioned for and on account of a supposed union or combination of its capital with the capital of the Standard Oil Company by means of acts done by the said Standard Oil Company long before the passage of the said statute and long before the incorporation of the said Waters-Pierce Oil Company in acquiring a majority of
121 the shares of another then existing company (hereinafter called the old Waters-Pierce Company) incorporated under the laws of Missouri by the same name as the said Waters-Pierce Oil Company which acts were not done in the state of Texas. And by means thereof the defendant the Waters-Pierce Oil Company is deprived of its property without due process of law. And it was also thereby decided that the said statute was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same as far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post facto* law by any state.

There is also manifest error in this that it was decided in and by the said judgment that the defendant the Waters-Pierce Oil Company was liable to the penalties imposed by the said statutes of 1899 and 1903 respectively for and on account of certain supposed agreements or understandings entered into before the passage of either of the said statutes between the Standard Oil Company and the old Waters-Pierce Company whose property and business the defendant the Waters-Pierce Oil Company afterwards acquired without becoming in any way bound by or answerable in respect of any of the said supposed agreements or understandings and never became so bound or answerable or did any act in carrying any of them into effect which supposed agreements or understandings if they existed were entered into out of the state of Texas. And by means of the said decision the said Waters-Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution.

There is also manifest error in this that the Court upon hearing the exceptions of the defendant to the plaintiff's amended original petition before the said trial overruled among others of them the exception (No. 9) whereby the defendant excepted to all parts and paragraphs of the said petition by which it was sought to hold the defendant subject to the provisions of the said statute of 1903 and to cancel its permit to do business in Texas and to recover penalties against it on account of the alleged holding or ownership by the Standard Oil Company of New Jersey of a majority of its stock because according to the allegations in the said petition the said
122 stock was so held and owned by the said Standard Oil Company at and long prior to the passage of the said statute of 1903 and its ownership of the said stock being a vested right and not in violation of the laws of the state of Texas when the defend-

ant's permit to transact business in Texas was granted to it on May 31st 1900 it was not competent or within the constitutional power of the legislature of the state of Texas to interfere with such ownership or divest the said Standard Oil Company of its said property or to make it an offense by the defendant subjecting it to penalties and to a forfeiture of its said permit for such vested ownership to continue and that the said statute of 1903 is violative of the Constitution of the United States for that it is both *ex post facto* and retroactive in its operation and for the additional reason that if given the effect of prohibiting the continuance of such ownership of the said stock by the said Standard Oil Company and of making it an offense on the part of the defendant for such holding to continue it would deprive the defendant of its property without due process of law and deny to the defendant the equal protection of the laws and impair the obligations of a contract contrary to the provisions of the said Constitution in the said exception referred to and for these reasons the defendant therein said that it was apparent that all allegations in the said petition with respect to the alleged ownership of the defendant's stock by the Standard Oil Company should be stricken out and of this special exception the defendant prayed the judgment of the Court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1903 for and on account of the acts of the Standard Oil Company in acquiring the said majority of the stock of the defendant before the passage of the said statute of 1903 and continuing afterwards to hold the same. And the defendant has thereby been denied the equal protection of the laws and is deprived of its property without due process of law. And it was also thereby decided that the said statute of 1903 was valid and not repugnant to the Constitution of the United States whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any *ex post facto* law by
123 any state.

5. There is also manifest error in this that the Court in like manner also overruled another of the said exceptions (No. 20) to the said petition whereby if the Court should construe the plaintiff's petition as alleging that the defendant was the same corporation—the same entity as the old Waters-Pierce Company (which the said petition does plainly allege) then the defendant excepted to all the allegations in the said petition whereby it was sought to recover penalties of the defendant under the provisions of the said statute of 1899 on account of the alleged ownership by the said Standard Oil Company of the stock of the defendant or on account of the alleged agreement between the defendant and the said Standard Oil Company or on account of the alleged agreement between the defendant and the said Standard Oil Company and the other corporations and persons mentioned in the said petition and said that the same were insufficient for the reason that if the petition be so construed it then affirmatively appeared from the said petition that the said alleged ownership of the stock of the defendant by the

said Standard Oil Company existed at the time of and prior to the taking effect of the said statute of 1899 and that all of the said alleged agreements and understandings were made and entered into prior to the passage of the said statute and for the reason that the said statute was intended to act prospectively only and if intended to apply to ownerships by one corporation of the stock of another corporation or to apply to agreements of the character of the said alleged agreements so set forth in the said petition it was only intended to apply to such ownerships of stock as should be acquired after the taking effect of the said statute and to such agreements as should be made or entered into after the taking effect of the said statute and if the said statute should be construed as having been intended by the legislature to authorize the recovery against the defendant of the penalties provided for in the said statute on account of the continuation of the said alleged ownership of its stock by the said Standard Oil Company or on account of the performance by this defendant of any of the alleged agreements so alleged to have
124 been made prior to the taking effect of *of* the said statute then such act so construed would be violative of the said Constitution in that it would be retroactive in its effect and impair the obligations of contracts and deny to the defendant the equal protection of the laws and would take the property of the defendant without due process of law and of this the defendant prayed judgment of the Court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1899 for and on account of the acts of the Standard Oil Company in acquiring the said stock of the old Waters-Pierce Company before the passage of the said statute of 1899 and continuing afterwards to hold the same and taking a corresponding majority of the shares or the beneficial interest in such majority of the shares of the defendant the Waters-Pierce Oil Company issued to the said Standard Oil Company for its interest in the old Waters-Pierce Company in which acts of the said Standard Oil Company the defendant had no part and for and on account of the alleged agreements and understandings between the old Waters-Pierce Company and the said Standard Oil Company and the said other corporations and persons entered into before the passage of the said statute of 1899 to none of which agreements or understandings the defendant ever became a party or became in any way answerable therefor. And the defendant is thereby denied the equal protection of the laws and is deprived of its property without due process of law.

6. There is also manifest error in this that the Court in like manner also overruled another of the said exceptions (No. 21) to the said petition whereby the defendant excepted to all the allegations in the said petition whereby it was sought to recover penalties of the defendant under the provisions of the said statute of 1903 on account of the alleged ownership by the said Standard Oil Company of the stock of the defendant or on account of the alleged agreements between the defendant and the said Standard Oil Company *or on account of the alleged agreements between the defendant and the said*

Standard Oil Company and the other corporations and persons mentioned in the said petition and said that the same were insufficient for the reason that it affirmatively appeared from the said petition that the alleged ownership of the stock of the de-
125 fendant by the said Standard Oil Company existed at the time of and prior to the passage of the said statute of 1903 and that all of the alleged agreements and understandings were made and entered into prior to the passage of the said statute and for the reason that the said statute was intended to act prospectively only and if intended to apply to ownerships by one corporation of the stock of another corporation or to apply to agreements of the character set forth in the said petition it was only intended to apply to such ownerships of stock as should be acquired after the taking effect of the said statute and to such agreements as should be made or entered into after the taking effect of the said statute and if the said statute should be construed as having been intended by the Legislature to authorize the recovery against the defendant of the penalties provided for in the said statute on account of the continuance of the said alleged ownership of the stock by the said Standard Oil Company or on account of the performance by the defendant of any of the agreements so alleged to have been made prior to the taking effect of the said statute such statute so construed would be violative of the said Constitution in that it would be retroactive in its effect and impair the obligations of contracts and deny to the defendant the equal protection of the laws and would take the property of the defendant without due process of law and of this the defendant prayed judgment of the Court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1903 for and on account of the acts of the Standard Oil Company in acquiring the said stock of the old Waters-Pierce Company before the passage of the said statute of 1903 and continuing afterwards to hold the same and taking a corresponding majority of the shares or the beneficial interest in such majority of the shares of the defendant the Waters-Pierce Oil Company issued to the said Standard Oil Company for its interest in the old Waters-Pierce Company in which acts of the said Standard Oil Company the defendant had no part and for and on account of the alleged agreements and understandings between the old Waters-Pierce Company and the said Standard Oil Company and the said other corporations and persons entered into be-
126 fore the passage of the said statute of 1903 to none of which agreements or understandings the defendant ever became a party or became in any way answerable therefor. And the defendant is thereby denied the equal protection of the laws and is deprived of its property without due process of law.

7. There is also manifest error in this that the Court in like manner overruled another of the said exceptions (No. 25) to the said petition whereby the defendant objected that each of the said statutes of 1899 and 1903 was so indefinite, vague and uncertain in its terms that it could not be ascertained by the language used what particular acts constituted an offense subjecting the offender to punishment as

therein prescribed and for that reason a person could not know in advance of committing the act whether he was violating the law and that to subject the defendant to heavy penalties for an alleged violation thereof would result in the taking of the defendant's property without due process of law contrary to the provisions of the said Constitution. And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said statutes of 1899 and 1903 respectively and is thereby deprived of its property without due process of law accordingly.

8. There is also manifest error in this that the Court in like manner overruled others of the said exceptions (Nos. 52 and 53) to the said petition whereby the defendant objected that the said statutes of 1899 and 1903 respectively were so indefinitely framed and of such doubtful construction that they could not be understood either from the language in which they were expressed or from some other written law of the state and by reason of their failure to designate an offense by the plain import of their words the infliction of the penalties prescribed by the said statute would be the taking of property without due process of law contrary to the provisions of the said Constitution. And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said statutes of 1899 and 1903 respectively and is thereby deprived of its property without due process of law accordingly.

127 9. There is also manifest error in this that evidence having been adduced at the trial of the said cause that the Standard Oil Company from some time in the year 1882 owned a majority of the shares of the old Waters-Pierce Company down to the incorporation of the defendant the Waters-Pierce Oil Company on the 29th May 1900 and that on or about the 24th September 1900 a majority of the shares of the defendant the Waters-Pierce Oil Company which had up to that time been held by H. C. Pierce in trust for the said Standard Oil Company (the same having been so issued to him upon the formation of the defendant company on account of the interest of the said Standard Oil Company in the old Waters-Pierce Company) were transferred to the said Standard Oil Company by an indorsement of the certificates therefor in blank by the said H. C. Pierce without any evidence of the registration of any transfer of the same on the books of the defendant company until early in the year 1904 when the said Standard Oil Company caused the same to be transferred on the said books into the name of M. M. Van Beuren and evidence having been also adduced at the said trial that the old Waters-Pierce Company carried on its business throughout the whole of Texas and in certain other states and in Mexico and obtained its supplies of refined oil almost exclusively from the Standard Oil Company and that the said Standard Oil Company did not carry on such business in the said territory in which the old Waters-Pierce Company so carried on business and that the defendant the Waters-Pierce Oil Company after acquiring the business of the old Waters Pierce Company as above mentioned carried on the said business in the same territory and in the same way without extending its business into other territory and that the said Standard Oil Company

did not extend its business into the territory in which the defendant so carried on business the judge before whom the said cause was tried at the said trial although there was no other evidence of any such agreement or understanding between the defendant and the Standard Oil Company as next hereinafter mentioned or of any other act by the defendant in carrying any other such agreement or understanding into effect directed the jury (in paragraph VII of his charge) upon the said evidence that if they found that the de-
128 fendant the Waters-Pierce Oil Company entered into or became a party to an agreement or understanding with the Standard Oil Company on June 1, 1900 to fix or regulate the price in Texas of oil refined from petroleum and if they further found that the defendant remained or continued to be a party to the said agreement or understanding if any and persisted in carrying the same out in Texas on June 1, 1900 or any subsequent date or dates prior to March 31, 1903 and that the oil with reference to which the said agreement or understanding was so made and carried out was the subject of local as distinguished from interstate commerce the jury should return a verdict for the state and thereby say that they found in favor of the state upon the issues submitted for their consideration in paragraph seven (VII) of the Court's charge and further instructed the jury that each day between May 31, 1900 and March 31, 1903 during which the defendant remained a party to the agreement or understanding therein mentioned would constitute a separate and distinct violation of the anti-trust laws of Texas. And the said judge also directed the jury that the said statute of 1899 was in force on May 31, 1900 and thenceforth until March 31, 1903 and that the said statute of 1903 became effective on March 31, 1903 and has since continued in force and that if the jury should convict the defendant of any violation or violations of the said statute of 1899 they should specify in their verdict the date or days for which it was so convicted and further specify therein that as a result of such conviction its permit to do business in Texas should be forfeited and the amount of money which should be adjudged against it as penalties for such violations fixing the same at not less than $200 or more than $5,000 per day for each day that they should find it had so violated the law. And the jury in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them in the said paragraph (VII) of the judge's charge for each of the days between May 31, 1900 and March 31, 1903 stating the same in their verdict as being 1033 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do busi-
129 ness in Texas should be canceled. By means whereof the jury found that any such agreement or understanding as above mentioned entered into between the old Waters-Pierce Company and the said Standard Oil Company became an agreement or understanding on the part of the defendant the Waters-Pierce Oil Company with the said Standard Oil Company as soon as the defendant acquired the property and business of the old Waters-Pierce Company and conducted the said business in the same manner and

in the same territory as the old Waters-Pierce Company had done without extending the said business into any other territory although the defendant had not otherwise than by its said acts entered into any such agreement or understanding and also that the defendant the Waters-Pierce Oil Company having entered into such agreement or understanding as mentioned in the said paragraph of the judge's charge although not in the State of Texas and having persisted in carrying the same out in Texas on the 1st June, 1900, was guilty of a violation of the said law on every subsequent day including Sundays and holidays down to the 31st March, 1903, although it did not on any such subsequent day or did not upon some of such subsequent days do any act in Texas in or towards carrying out the said agreement or understanding but only remained a party thereto. And by the judgment upon the said verdict upon the issues submitted to the jury in the said paragraph (VII) of the judge's charge the defendant the Waters-Pierce Oil Company is deprived of its property without due process of law.

10. There is also manifest error in this that upon the evidence mentioned in the last preceding paragraph without any other evidence or suggestion of such a combination or union as next hereafter mentioned the said judge also directed the jury (in paragraph VIII of his charge) that if they found that on June 1, 1900 or any date subsequent thereto and prior to March 31, 1903, the defendant had brought about or permitted any combination or union of its capital with the capital of the said Standard Oil Company whereby the price in Texas of such oil as mentioned in the said clause of the charge was sought to be fixed or regulated or would be
130 reasonably calculated to be fixed or regulated or whereby the trade in such oil in Texas was sought to be controlled or limited the jury should return a verdict for the state and thereby say that they found for the state upon the issues submitted for their consideration in paragraph eight (VIII) of the Court's charge and further directed the jury that if the defendant became a party to a pool of the character mentioned in that paragraph each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool would constitute a separate violation of the anti-trust laws of Texas. And the jury in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them in the said paragraph of the judge's charge for each of the days between May 31, 1900, and March 31, 1903, stating the same in their verdict as being 1033 days and in pursuance of the said directions and the other directions hereinbefore mentioned fixed the penalties for the violations of law of which the defendant was convicted by their verdict upon the issues submitted to them in the two paragraphs seven (VII) and eight (VIII) of the judge's charge at $1, 549,500 and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant the Waters-Pierce Oil Company guilty of having brought about or permitted such a combination or union of its capital with the capital of the Standard Oil Company as above mentioned by means of the acts of the said Standard Oil Company

in acquiring a majority of the shares of the old Waters-Pierce Company long before the passage of the said statute of 1899 and before the defendant came into existence and in holding the said shares until the defendant was incorporated and acquired the property and business of the old Waters-Pierce Company and then taking the beneficial interest in a corresponding majority of the shares of the defendant the Waters-Pierce Oil Company for its interest in the old Waters-Pierce Company in which acts of the said Standard Oil Company the defendant had no part and although none of the said acts were done in the State of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or union or for any of the supposed purposes thereof on some
131 or any of the days for which it was so convicted. And by the judgment upon the said verdict upon the last mentioned paragraph (VIII) of the judge's charge the defendant the Waters-Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution and it was thereby decided that the said statute of 1899 was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post fact*- law by any state.

11. There is also manifest error in this that upon the evidence mentioned or referred to in the next preceding paragraph hereof without any other evidence or suggestion of any such combination as next hereinafter mentioned and although it was agreed by the parties at the said trial for the purposes of this case that the said Standard Oil Company had from a time long before the passage of the said statute of 1903 owned a majority of the shares of the defendant the Waters-Pierce Oil Company the said judge also directed the jury (in paragraph IX of his charge) that if they found that the defendant entered into a combination of its capital with the capital of the said Standard Oil Company for the purpose of creating in Texas or which tended to create in Texas or carry out in Texas restrictions in the free pursuit in that state of the business of selling such oil as is mentioned in the said paragraph of the charge or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination on March 31 1903 or any date subsequent thereto and prior to April 29, 1907 the jury should return a verdict for the state and thereby say that they found for the state upon the issues submitted for their consideration in paragraph nine (IX) of the Court's charge and further directed the jury that if the defendant became a party to a trust of the character mentioned in that paragraph of the charge each day between March 30, 1903 and April 29, 1907 that it remained a party to and acted under such trust would constitute a separate violation of the anti-trust laws of Texas and that if the jury should convict the defendant of any violations of the said
132 statute of 1903 they should specify in the verdict the date or days for which it was so convicted and further specify therein that as a result of such conviction its permit to do business in Texas

should be forfeited and the sum of money that should be adjudged against it as a penalty for such violation fixing the sum at $50 per day for each day that they should convict it of having violated the said law. And the jury in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them by the said paragraph of the judge's charge for each of the days between April 1, 1903 and April 29, 1907 stating the same in their verdict as being 1488 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant, the Waters-Pierce Oil Company guilty of having entered into such a combination as last above mentioned by means of the acts of the said Standard Oil Company in acquiring the said majority of the shares of the said Waters-Pierce Oil Company long before the passage of the said statute of 1903 although none of the said acts were done in the State of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for any of the supposed purposes thereof on some or any of the days for which it was so convicted and although the defendant had no means of requiring or inducing the said Standard Oil Company to part with the said majority of shares or any part thereof.

12. There is also manifest error in this that the said judge also directed the jury (in paragraph X of his charge) that if they found that the direction of the affairs of the defendant corporation and the affairs of the said Standard Oil Company was under the same management and control on March 31, 1903 or any date subsequent thereto and prior to April 29, 1907 and that they were placed under such management or control by their respectively authorized officers under such circumstances that such common management or control created or tended to create or carry out restrictions in the sale in Texas of such oil as is referred to in said paragraph of the
133 charge or to fix, maintain, or increase the price in Texas of such oil or to prevent or lessen in Texas the competition in the sale of such oil the jury should return a verdict for the State and thereby say that they found for the State on the issues submitted for their consideration in paragraph ten (X) of the Court's charge and further directed the jury that if the defendant entered into a monopoly of the character mentioned in that paragraph of the charge each day between March 30, 1903 and April 29, 1907 that it remained a party to such monopoly constituted a separate violation of the anti-trust laws of Texas. And although there was no evidence that the direction of the affairs of the defendant and the said Standard Oil Company was after the passage of the said statute of 1903 brought under the same management or control or was under the same management or control on the 31st March 1903 when the said statute was passed or on the first or second or any subsequent day thereafter or that the said Standard Oil Company had any power to bring the direction of the affairs of the said two corporations under the same control or management until the said majority of the shares in the defendant corporation were transferred on its books in*to* the name of M. M. Van Beuren as hereinbefore mentioned in the year 1904 or

that the said Standard Oil Company exercised any such power by doing so either before or after the same were so transferred or that any of the things supposed to have been done, had been done in Texas except carrying on business there as hereinbefore mentioned the jury in pursuance of the said direction of the judge found for the plaintiff against the defendant on the issues submitted to them by the said paragraph ten (X) of the judge's charge for each of the days between April 1, 1903 and April 29, 1907 stating the same in their verdict as being 1488 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant, the Waters-Pierce Oil Company guilty of the offense of bringing the direction of its affairs under the same management and control as those of the said Standard Oil Company although it had had no part in doing so itself and although whatever was supposed to have been done to
134 bring the direction of the affairs of the said two corporations under the same management and control had not been done in Texas and had been done before the passage of the said statute of 1903 or had not been done on some of the days for which it was so convicted and was not in fact done at all.

13. There is also manifest error in this that the said judge also directed the jury (in paragraph XI of his charge) that if they found that the Standard Oil Company had on March 31st 1903 acquired a majority of the capital stock of the defendant, the Waters-Pierce Oil Company, and thereby effected a combination of the said corporations with the purpose and intention therein mentioned on the part of the managing officers and directors of the said Standard Oil Company the jury should return a verdict for the State and thereby say that they found in favor of the State upon the issues submitted for their consideration in paragraph eleven (XI) of the Court's charge and further directed the jury that each day between March 30, 1903 and April 29, 1907 that the defendant remained a party to such monopoly constituted a separate violation of the anti-trust laws of Texas. And although at the said trial no evidence was adduced that the said Standard Oil Company acquired on or after the 31st March 1903 such a majority of the said capital stock or any shares necessary to make such majority or ever acquired any such shares within the State of Texas and it was agreed by the parties at the said trial that since a time long previous to the 31st March 1903 the said Standard Oil Company had owned more than a majority of the said capital stock the jury in pursuance of the said direction found for the plaintiff against the defendant upon the issues so submitted to them for each of the days between April 1, 1903 and April 29, 1907 stating the same in their verdict as being 1488 days and in pursuance of the said directions and the other directions hereinbefore mentioned fixed the penalties for the violations of law of which the defendant was convicted by their verdict upon the issues submitted to them in the three paragraphs, nine (IX), ten (X) and eleven (XI) of the judge's charge at $74,400 and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant, the Waters-Pierce Oil Com-

pany guilty of having effected a combination of itself and
135 the said Standard Oil Company solely by reason of the acts of the said Standard Oil Company done long before the passage of the said statute of 1903 in acquiring the said majority of the shares of the said Waters-Pierce Oil Company although none of the said acts were done in the State of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for giving effect to the supposed purpose or intention of the managing officers of the said Standard Oil Company on some or any of the days for which the defendant was so convicted. And by the judgment upon the said verdict upon the issues submitted to the jury in the three last mentioned paragraphs of the judge's charge respectively the said Waters-Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution and it was thereby decided that the said statute of 1903 was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any *ex post facto* law by any state.

14. There is also manifest error in this that the said judge also declared his opinion to the jury (in paragraph XI of his charge) that if the said Standard Oil Company acquired a majority of the capital stock of the defendant the Waters-Pierce Oil Company a combination of the said two corporations would be thereby effected and with that direction he left the said issues to the jury whereas a combination of the said two corporations would not be thereby effected. And the jury in pursuance of the said direction found for the plaintiff against the defendant upon each of the issues submitted to them respectively in the four paragraphs (eight (VIII), nine (IX), ten (X) and eleven (XI) of the judge's charge and thereby found the defendant guilty of having effected such combination solely by reason of the acts of the said Standard Oil Company in acquiring the said majority of shares although none of the said acts were done in the State of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for giving
effect to any supposed purpose or intention thereof on some
136 or any of the days for which the defendant was so convicted. And by the judgment upon the said verdict upon the issues submitted to the jury in the four last mentioned paragraphs of the judge's charge respectively the defendant the said Waters-Pierce Oil Company is punished for an act which it could not control and an offense that it could not commit and is thereby deprived of its property without due process of law contrary to the provision of the said Constitution.

15. There is also manifest error in this that the said judge upon the trial of the said cause arbitrarily and without any regard to the rules of law admitted evidence of (1) the incorporation of the Standard Oil Company of Ohio on or about the 10th January 1870, (2) the incorporation of the old Waters-Pierce Company in Missouri on the 1st May 1878 and the increase of its capital on the 13th June

1882, (3) the agreement of the 2nd January 1882 by which the Standard Oil Trust was formed and to which the old Waters-Pierce Company or the defendant, the Waters-Pierce Oil Company or H. C. Pierce, who owned about two-fifths of the shares in these two companies never became a party (4) the incorporation of the Standard Oil Company of New Jersey herein referred to as the Standard Oil Company on the 1st August 1882, (5) the ownership by the Standard Oil Company of the majority of the shares of several other companies as stated in the agreement of counsel designated Stipulation No. 1 (6) the judgment in favor of the State of Texas against the old Waters-Pierce Company on the 15th June 1897 for the forfeiture of its permit to do business in Texas which judgment was affirmed by this Court on or about the 19th March 1900 (177 U. S. 28) and also (7) the testimony of several witnesses relating to the doings and agreements of the agents of corporations other than the defendant and of the agents of the old Waters-Pierce Company prior to the incorporation of the defendant, the Waters-Pierce Oil Company, and prior to the 1st June 1900 and to the doings and agreements of the defendant's agents and the agents of other corporations outside the State of Texas and to the doings and agreements of individuals both prior and subsequent to the 1st June 1900 and both outside and within the State of Texas (to all of which evidence and testimony respectively counsel for the defendant duly
137 objected at the trial as appears by the record) And although there was not any other evidence whatever of an agreement at any time between the defendant or the governing officers of the defendant and any other persons whatever relating to the management of the defendant's business, yet the said judge arbitrarily and without any regard to the rules of law and intending that the jury should identify the defendant with the old Waters-Pierce Company as charged in the petition of the State and should convict the defendant of violations of the said anti-trust laws upon the issues submitted to them in the five paragraphs last above mentioned of the judge's charge without any legal evidence of any such violation and should for that purpose consider irrelevant evidence under color of first finding a conspiracy of which there was no evidence whatever overruled all the objections of the defendant to the admission of the said evidence and directed the jury (in the division V of his charge) that if they found from the other evidence in the case independent of all declarations or statements made by any person or persons except their evidence given as witnesses personally or by deposition that on June 1, 1900 there was formed or existed an agreement between the governing officers of the defendant and the governing officers of any of the other corporations alleged in the State's petition to be co-conspirators with the defendant relating to the management of the defendant's business or between the governing officers of the defendant and any of the individuals alleged in the State's petition to be co-conspirators with the defendant relating to the management of the defendant's business then the jury might consider for what, if anything, they thought it worth such acts or declarations of all the parties to the said agreement and such acts and decla-

rations of their authorized agents if any as were done or made during the existence of such agreement and in furtherance of its execution for the purpose of determining the character of such agreement and whether or not it contemplated a violation by the defendant of the anti-trust laws of Texas, but that none of the said evidence could be considered by the jury for any other purpose whatever and none of it could be so considered by the jury against the defendant for the said purposes except such of it, if any, as they should think proper to be considered when tested by the rules so stated relating to its competency. And also directed the jury (in division XIII of
138 his charge) that they might consider so far as it tended to establish some one or more of the issues submitted for their consideration in the said five paragraphs (VII to XI) of his charge the evidence introduced before them that the defendant had given rebates and discounts in the course of its dealings and that the defendant had made contracts and entered into understandings other than those submitted for their consideration in the said five paragraphs of the charge and also the evidence introduced before them of the general course of dealings of the defendant in Texas and elsewhere including some of its business methods in meeting competition although he directed them that none of the evidence showed or tended to show any violation of the anti-trust laws of Texas unless it tended to establish some one or more of the said issues so submitted for their consideration. And the verdict was accordingly given for the State upon the said issues submitted to the jury whereas according to due process of law it ought to have been given for the defendant. And upon the appeal of the defendant the Court of Civil Appeals in affirming the said judgment unreasonably and wilfully disregarded the question thereby raised under the said Constitution as well as the rules of evidence according to the usage and practice prevailing in Texas. And the defendant is thereby deprived of its property without due process of law contrary to the provisions of the said Constitution.

16. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 5) as follows:

"You are instructed that inasmuch as the defendant is a corporation incorporated and existing under the laws of the State of Missouri the question of the legality of the ownership of a majority of its stock by the Standard Oil Company is not an issue in this case and in this connection you are further instructed that the anti-trust laws of Texas being designated merely to prohibit unlawful combinations or agreements having the purpose of fixing and regulating prices and other forbidden purposes denounced by such laws could not be violated by the mere ownership by the Standard Oil Company of a majority of the stock of the defendant."

139 Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas merely on account of the acts of the Standard Oil Company in owning in another state a majority of the stock of the defendant. And the verdict having been given for the State,

the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law, contrary to the provisions of the said Constitution.

17. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 7) as follows:

"You are instructed that it is admitted by the defendant that the Standard Oil Company of New Jersey acquired a majority of the shares of stock of the defendant company on or about the 4th day of September 1900 and thereafter continued to own the same. Therefore the Court further instructs the jury that the acquiring and owning of said shares of stock by said Standard Oil Company did not constitute a violation of the act approved March 31st 1903 even though the jury may believe that the said Standard Oil Company voted said shares of stock at the meeting of the stockholders of the defendant company for the election of director of said defendant company."

And there is also manifest error in this that the said judge also refused to direct the jury as requested by the defendant (Special Charge refused No. 24).

"You are instructed that since the Standard Oil Company acquired a majority of the stock of the defendant prior to the enactment of the anti-trust act of 1903 and since the defendant company being a corporation created by the laws of Missouri the acquisition of such stock by the Standard Oil Company cannot be inquired into by the courts of Texas but must be in all things treated as legal and valid the inhibition of the anti-trust act of 1903 against any corporation's acquiring the shares of stock of any other corporation for the purpose of preventing or lessening competition or tending to affect or lessen competition can have no application to this case."

140 Whereas the said directions ought respectively to have been given so that the jury might not convict the defendant of violation of the said statute of 1903 upon any of the three issues submitted to them as aforesaid in the paragraphs nine (IX), ten (X) and eleven (XI) of the judge's charge on account of the acts of the Standard Oil Company in acquiring the said majority of shares before the passage of the said statute of 1903. And the verdict having been given for the State, the defendant is by reason of the said refusals deprived of its property by the said judgment without due process of law and subjected to the said penalties by virtue of an *ex post facto* law passed by the state of Texas contrary to the provisions of the said Constitution.

18. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 9) as follows:

"You are instructed that it is not a violation of the laws of the State of Texas and has not been a violation of such laws or any laws at any time since May 31st, 1900 for the Standard Oil Company of New Jersey or any other person or corporation to own a part of the stock of the defendant Waters-Pierce Oil Company, and you will

therefore disregard any evidence that has been introduced before you upon this subject."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas merely on account of the acts of the Standard Oil Company in owning in another state a majority of the stock of the defendant. And the verdict having been given for the State, the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law, contrary to the provisions of the said Constitution.

19. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges No. 13) as follows:

"You are instructed that in view of the fact that the Standard Oil Trust Agreement of Jánuary 2nd 1882 and the supplemental
141 agreement thereto of January 4th 1882 were executed long prior to the creation of the defendant, and there is no evidence showing that the defendant ever adopted said agreement you will not consider the execution of said agreement or the contents of the same as in any wise effecting this defendant."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas on account of this agreement between other persons made long before the defendant came into existence and long before the passage of the said anti-trust laws. And the verdict having been given for the State, the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law, contrary to the provisions of the said Constitution.

20. There is also manifest error in this that the penalties of $1,549,500 and $74,400 assessed by the jury are respectively so plainly excessive that the defendant is thereby deprived of its property without due process of law.

21. There is also manifest error in this that the Court upon hearing the said exceptions of the defendant to the said petition in manner aforesaid overruled others of the said exceptions (Nos. 28 and 38) whereby the defendant objected that the recovery of penalties under the said statutes respectively for acts done more than two years before the commencement of the said action was barred by article 219 of the Code of Criminal Procedure of Texas. And in this that the Court also overruled in like manner others of the said exceptions (Nos. 30, 31, 40, 41) whereby the defendant objected respectively that if the said limitation was not available to it the defendant would be denied the equal protection of the laws contrary to the provisions of the said Constitution and that the said statutes of 1899 and 1903 would respectively be invalid by reason thereof. And in this that the Court also in like manner overruled others of the said exceptions (Nos. 32 and 42) whereby the defendant objected that the recovery of the said penalties for acts done more than two years before the commencement of the said action was barred by article 3354 of the Revised Statutes of Texas. And in this
142 that the Court also in like manner overruled others of the said exceptions (Nos. 34 and 44) whereby the defendant ob-

jected that if the said limitation was not available to it the defendant was denied the equal protection of the laws, contrary to the provisions of the said Constitution and that the said statutes of 1899 and 1903 were invalid respectively by reason thereof. And in this that the Court also in like manner overruled others of the said exceptions (Nos. 35 and 37) whereby the defendant objected respectively that the recovery of penalties under the said statute of 1899 for acts done more than four years before the commencement of the said action was barred by article 3358 of the said Revised Statutes and that if the said limitation was not available to it the defendant was denied the equal protection of the laws contrary to the provisions of the said Constitution. And in this that the judge also refused with like effect and consequences to direct the jury as requested by the defendant in the Special Charges refused Nos. 1, 2, and 3 respectively as regards the said limitations which were duly pleaded in the defendant's answer.

22. There is also a manifest error in this that the Court in like manner overruled another of the said exceptions (No. 10) to the said petition whereby the defendant objected that the parts thereof which seek to hold the defendant liable to penalties and a forfeiture of its said permit because of the alleged agreement or understanding whereby in consideration of the defendant purchasing all of its supplies from the said Standard Oil Company, the said Standard Oil Company agreed that the defendant should be permitted to sell its products in Texas without competition or interference by the said Standard Oil Company because it appears from the petition that the said Standard Oil Company was and is a citizen of New Jersey and never obtained a permit to do business in Texas and it is not alleged that it ever contemplated entering Texas to do business therein or could have obtained a permit so to do and therefore an agreement such as alleged if made could not be construed as violating any laws of Texas without giving to such laws an extra-territorial effect and operation binding upon citizens of other states and with respect to inter-state commerce and in violation of the said Constitution and the defendant moved the Court to strike
143 out the *the* said allegations with respect to the said alleged agreement and understanding. And the said exception being overruled, the defendant is by the said judgment made liable to the penalties imposed by the said laws on account of the said alleged agreement or understanding contrary to the provisions of the said Constitution relating to commerce among the several states and is so deprived of its property without due process of law.

23. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 23) as follows:

"You are instructed that if you believe from the evidence that the defendant has entered into any agreement by which it has bound itself to transact business within a certain territory in the United States, including the State of Texas, and that in pursuance of such agreement the defendant has been and is transacting business in the State of Texas, the making of such agreement and the transaction

of business thereunder by the defendant cannot be considered as in violation of the Anti-Trust Laws of Texas, and in this connection you are instructed that the defendant always had and now has the right to confine its business operations to any territory desired by it and that the fact that the defendant has not extended its operations to a broader field would not render the defendant guilty of violating the Anti-Trust Laws of Texas."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the said laws by reason of any such agreement or understanding as alleged as aforesaid by which the said Standard Oil Company agreed that the defendant should be permitted to sell its products in Texas without competition or interference by the said Standard Oil Company in consideration of the defendant purchasing all its supplies from the said Standard Oil Company, and which agreement or understanding related to commerce among the several states. And the verdict having been given for the State the defendant is by the said judgment deprived of its property without due process on account of statutes passed by the State of Texas regulating commerce
144 among the several states contrary to the provisions of the said Constitution in that behalf.

24. There was also manifest error in this that the said judge at the said trial arbitrarily and without any regard to the rules of law and for the purpose of exciting and inflaming the prejudices of the jury against the defendant admitted in evidence against the objection of the defendant proof of the Standard Oil Trust agreement of 1882 in the plaintiff's petition set out which was made many years before the incorporation of the defendant and to which it was admitted that the defendant never became a party. And in this that the said judge in like manner admitted in evidence the paragraphs (3rd, 4th, 5th, 6th, 7th, and 8th) of the agreement of counsel called Stipulation No. 1 setting out subject to all legal objections that the Standard Oil Company of New Jersey owned a majority of the shares of the companies therein mentioned by the names of the Standard Oil Company of Indiana, New York and Kentucky respectively and of the Continental Oil Company and the Republic Oil Company at the times and in the manner therein mentioned and that the said companies did not transact any business in Texas, all of which were matters in which the defendant was in no way concerned and had no possible relation to any of the questions involved in this case. And also in this that the said judge in like manner admitted in evidence that the defendant had given rebates and discounts to certain dealers and had sold oil at different prices in different localities in Texas, which evidence was irrelevant to all the issues in the case. And also in this that the said judge in like manner admitted in evidence the testimony of the witness C. W. Cahoon to the effect that at points in Texas where there was competition the defendant sometimes sold oils at less than at points where there was no competition, which testimony had no tendency to show any violation of the laws of Texas and could have no effect except to prejudice the jury. And also in this that the said judge in like manner admitted

in evidence the testimony of the said C. W. Cahoon to the effect that for about 60 days in 1906 certain brands of oil of grades inferior to that known as Eupion Oil had been sold by the defendant
145 as Eupion oil, which evidence was frivolous and irrelevant.

And also in this that the said judge in like manner admitted in evidence the testimony of the witness, A. W. Clem to the effect that the old Waters-Pierce Company in 1891 cut the prices of oil at Seymour and other places in Texas and also that the old Waters-Pierce Company in 1894 after it bought out the business of the same witness advanced the selling price of oil from 9½ cents to 22 cents per gallon, which testimony did not relate in any way to the defendant or its doings or to any issue involved in this case. And in this that the said judge in like manner admitted in evidence the testimony of the witness Royer Campbell to the effect that in 1894 when he quit buying from the old Waters-Pierce Company and bought from other persons in San Antonio, the old Waters-Pierce Company immediately cut the price of oil from 16 or 17 cents to 8 and 10 cents per gallon and also his testimony as to the character of warfare and competition that the old Waters-Pierce Company carried on with him in 1894, which evidence did not relate in any way to the defendant or anything in question in this case. And the said judge permitted the jury to consider all the said evidence so admitted so far as it might seem to establish any of the said issues submitted for their consideration. And by the admission of the said several pieces of evidence respectively, the prejudices of the jury were excited and inflamed against the defendant and their attention was diverted from the true issues in the case and the defendant was prevented from having a trial of the said issues according to the due course of law. And by the judgment upon the verdict upon the issues submitted to the jury as aforesaid, the defendant is deprived of its property without due process of law contrary to the provisions of the said Constitution.

25. There is also manifest error in this that the Court appointed a receiver of the property and assets of the defendant and the bond of such receiver was received and approved as appears by the said record after the judgment given upon the said verdict was suspended by the proceedings by way of appeal on the part of the defendant from the said judgment although the Court had no authority to appoint such receiver otherwise than as a consequence of the
146 said judgment and for the purpose of carrying the same into effect. And the defendant was thereby deprived of its property without due process of law contrary to the provisions of the said Constitution.

26. There is also manifest error in this that after the judgment given upon the said verdict and after notice of appeal therefrom by the defendant according to law the Court acting under color of the Texas statute of 1907 c. 87 but arbitrarily and wilfully disregarding its provisions and purposes appointed the said receiver for the purpose of depriving the defendant of its property and business and not for any purpose for which the appointment of a receiver was authorized by the said statute and on the alleged ground that the

said judgment had been rendered against the defendant for violation of the said anti-trust laws and that newspaper interviews with the counsel for the defendant had been brought to the attention of the Court in which the said counsel had declared the purpose of the defendant to appeal from the said judgment and to continue to carry on its business in the same manner as theretofore and without any evidence being submitted to the Court in connection with the application for the appointment of such receiver. And the Court disregarding the provisions of the said statute and the due course of law made the said appointment of a receiver not because any interest of the state seemed to require such action, but for the pretended purpose of preventing the defendant from a continued violation of the law, although the Court knew that the defendant had appealed from the said judgment and denied any violation on its part of the said anti-trust laws and although the Court assumed, as declared by the Court at the time of such appointment, that the defendant would file its proper supersedeas bond upon the said appeal and had a right to do so within the time provided by law all of which appears by the bill of exceptions of the defendant as matters connected with the appointment of the receiver, which bill of exceptions was signed and allowed by the judge who held the said Court at the time of the said proceedings. And the defendant by the appointment of the said receiver for such purpose and in such circumstances is deprived of its property without due process of law contrary to the provisions of the said Constitution.

147 27. There is also manifest error in this that the Court decided that the said statute of 1907 under color of which the said receiver was so appointed was valid and not repugnant to the said Constitution although the statute was passed after the commencement of the said action and provided that when any law of the said state including any of the said Anti-Trust Laws for the violation of which fines or penalties or forfeitures were provided had been theretofore violated or should be violated before the taking effect of the said statute by any corporation the said state should have a lien to secure the payment of such fine penalties and costs from the time when the said statute took effect on all property of such corporation within the said state or which should thereafter become or be brought within the said state and also provided for the appointment of a receiver for such corporation in the cases therein mentioned but did not provide for any lien or authorize the appointment of a receiver in the case of a violation of any of the said laws by any person other than a corporation. Whereas it ought to have been decided that the said statute was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any *ex post facto* law by any state and was also invalid because the defendant was thereby denied the equal protection of the laws and deprived of its property without due process of law contrary to the provisions of the said Constitution.

28. There is also manifest error in this that after judgment was improperly given upon the said verdict as aforesaid for the plaintiff the court appointed a receiver of the property and assets of the defendant, the Waters-Pierce Oil Company as specified in the orders

appointing a receiver whereas the Court ought not to have appointed such receiver. And by the appointment of such receiver, the defendant is deprived of its property without due process of law contrary to the provisions of the said Constitution.

And the said Waters-Pierce Oil Company prays that the said judgment and order and the judgment affirming the same respectively for the errors aforesaid and others in the record and proceedings aforesaid may be reversed, annulled and altogether held
148 for nothing and that it may be restored to all things which it hath lost by occasion of the said judgment and order and the affirmance thereof as aforesaid.

MONFIELD STOREY,
J. L. THORNDIKE,
J. D. JOHNSON,
Counsel for the Plaintiff-in-Error.

Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Mar. 30, 1908.

R. H. CONNERLY, *Clerk.*

149 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Third Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Waters-Pierce Oil Company incorporated under the laws of Missouri, Appellant and the State of Texas Appellee which judgment affirmed a judgment of the District Court of Travis County appointing a receiver after a judgment upon a verdict against the Appellant being cause No. 4213 (Receivership Proceeding) in the said Court of Civil Appeals wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Waters-Pierce Oil Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you,

if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid,
150 with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of March in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

To operate as a supersedeas or giving bond conditioned according to law for one thousand (1000) dollars.

Allowed by
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

Copy of Writ of Error lodged for the defendant in error. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 30, 1908.

R. H. CONNERLY, *Clerk.*

151 Know all men by these presents, That we, the Waters-Pierce Oil Company, incorporated under the laws of Missouri, as principal, and the American Surety Company of New York incorporated under the laws of New York, as sureties, are held and firmly bound unto the State of Texas in the full and just sum of one thousand dollars, to be paid to the said State of Texas or its certain attorney, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Court of Civil Appeals for the Third Judicial District of Texas in a suit pending in said Court, between the said Waters-Pierce Oil Company Appellant and the State of Texas Appellee being cause No. 4213 (Receivership Proceeding) in the said Court a judgment was rendered against the said Waters-Pierce Oil Company affirming a judgment of the District Court of Travis County appointing a receiver after a judgment upon a verdict against the said Appellant. And the said Waters-Pierce Oil Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Texas citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Waters-Pierce Oil Company shall prosecute the said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal Waters-Pierce Oil Co., St. Louis, Mo.]

WATERS-PIERCE OIL COMPANY,
By J. D. JOHNSON, *Attorney.*
AMERICAN SURETY COMPANY OF NEW YORK,
By A. J. ADAMS, *Resident Vice-President.*

Attest:
CLAUDE B. BROWN,
Resident Assistant Secretary.

Sealed and delivered in presence of—
R. B. LENNON,
E. K. COSTELLO,
As to all parties.

Approved by—
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

March 29, 1908.

(Endorsed:) Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Mar. 30, 1908. R. H. Connerly, Clerk.

152 UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Civil Appeals for the Third Judicial District of Texas in cause No. 4213 (Receivership Proceeding) in the last mentioned Court wherein the Waters-Pierce Oil Company incorporated under the laws of Missouri is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eight.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

On this 30th day of March, in the year of our Lord one thousand nine hundred and eight, personally appeared Coley White before me, the subscriber, a Notary Public within and for Travis County, State of Texas, said White being an adult person and being duly sworn by me makes oath that he delivered a true copy of the within citation to Thomas M. Campbell the Governor of the State of Texas on said day and also delivered a true copy of the within citation to Robert Vance Davidson the Attorney General of said State of Texas on said day and that he the said White is a duly appointed, qualified and acting Deputy under Eugene Nolte the United States Marshal
153 for the Western District of Texas and as such Deputy served said copies.

EUGENE NOLTE,
U. S. Marshal, Western District of Texas,
By COLEY WHITE, *Deputy.*

Sworn to and subscribed the 31st day of March, A. D. 1908.
[SEAL.] ROSALIE DORSER,
Notary Public, Travis Co., Texas.

Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Apr. 8, 1908.

R. H. CONNERLY, *Clerk.*

154 *Clerk's Final Certificate.*

I, R. H. Connerly, Clerk of the Court of Civil Appeals of the Third Supreme Judicial District of Texas do hereby certify that the foregoing 152 pages contain true and correct copies of the transcript from the District Court of Travis County, twenty-sixth Judicial District, Opinions of the Court of Civil Appeals and separate opinions of Justices Fisher and Key, Orders and judgment of said court, its opinion, and the motion for a rehearing filed in said court and its order overruling same and application of Attorney General to Supreme Court for receiver to take charge of property and amended application for appointment of receiver, Supreme Court's Opinion thereon; Judgment of Supreme Court refusing writ of error, its bill of costs and bill of costs in Court of Civil Appeals, assignments of error in Supreme Court of the United States and the copy of writ of error lodged for defendant in error, together with the appeal bond to Supreme Court of United States and citation therefrom, as the same appear of record and on file in my office in the cause entitled—Waters Pierce Oil Company, Appellant *vs.* The State of Texas, Appellee, No. 4213, Receivership Proceeding, in said Court. Witness my hand and the seal of said court at office, at Austin, Texas, this the 17th day of April, A. D. 1908.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY, *Clerk.*

Writ of error and Citation in error, originals, attached to transcript, after this certificate.

R. H. CONNERLY, *Clerk.*

155 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Third Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Waters-Pierce Oil Company incorporated under the laws of Missouri Appellant and the State of Texas Appellee which judgment affirmed a judgment of the District Court of Travis County appointing a receiver after a judgment upon a verdict against the Appellant being cause No. 4213 (Receivership Proceeding) in the said Court of Civil Appeals wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or
156 of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Waters-Pierce Oil Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of March, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

To operate as a supersedeas on giving bond conditioned according to law for one thousand (1,000) Dollars.

Allowed by

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

157 [Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin Texas, Mar. 30 1908. R. H. Connerly, Clerk.

158 UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Civil Appeals for the Third Judicial District of Texas in cause No. 4213 (Receivership Proceeding) in the last-mentioned Court wherein the Waters-Pierce Oil Company incorporated under the laws of Missouri is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eight.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

159 [Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin Texas, Apr. 8 1908. R. H. Connerly, Clerk.

On this 30th day of March, in the year of our Lord one thousand nine hundred and eight, personally appeared Coley White before me, the subscriber, a Notary Public within and for Travis County, State of Texas, said White being an adult person and being duly sworn by me makes oath that he delivered a true copy of the within citation to Thomas M. Campbell the Governor of the State of Texas on said day and also delivered a true copy of the within citation to Robert Vance Davidson the Attorney General of said State of Texas on said day and that he the said White is a duly appointed, qualified and acting Deputy under Eugene Nolte the United States Marshal for the Western District of Texas and as such Deputy served said copies.

EUGENE NOLTE,
U. S. Marshal, Western District of Texas,
By COLEY WHITE, *Deputy.*

Sworn to and subscribed the 31st day of March, A. D. 1908.

[Seal Notary Public, County of Travis, Texas.]

ROSALIE DORSER,
Notary Public, Travis Co., Texas.

Endorsed on cover: File No. 21,131. Texas court of civil appeals, third supreme judicial district. Term No. 728. The Waters-Pierce Oil Company, plaintiff in error, *vs.* The State of Texas. Filed April 23d, 1908. File No. 21,131.

MAIN CASE.

WATERS-PIERCE OIL COMPANY,
Plaintiff in Error,
vs.
THE STATE OF TEXAS,
Defendant in Error.

SUIT PENDING IN THE SUPREME COURT OF THE UNITED STATES.

And now comes the State of Texas and moves the court to advance this cause and set the same down for submission at as early a date as is possible at the October term, 1908, and shows:

First. That this was a suit brought in the State court of Texas by the State of Texas against the Waters-Pierce Oil Company for alleged violation of two separate statutes of the State of Texas known as the Anti-trust Acts of 1899 and 1903, the purpose of the suit being to recover penalties and forfeit the permit of the Waters-Pierce Oil Company to do business in Texas, that company being a Missouri corporation. A trial before the court and jury resulted in a verdict and judgment in favor of the State, adjudging that the defendant, Waters-Pierce Oil Company, had been guilty of a violation of the law of the State of Texas for each and every day for seven years, and assessing as penalties an aggregate sum of $1,623,900, and a judgment prohibiting the Waters-Pierce Oil Company from doing business in the State of Texas, except an interstate business.

This judgment was affirmed by the Court of Civil Appeals of the State of Texas upon regular hearing, and a writ of error denied by the Supreme Court of the State, thus making the judgment of the Court of Civil Appeals final, and writ of error was sued out to the Court of Civil Appeals from this court, and it is now here for revision and correction.

Second. The State of Texas would show that the plaintiff in error is attacking the constitutionality of both of the above mentioned anti-trust acts, and, as there are a great many suits now pending in the State courts involving the same question, it is of the utmost importance to the State of Texas and the public at large, as well as to the persons doing business in the State of Texas, to know whether or not these statutes are unconstitutional because of their alleged repugnance to the Constitution of the United States.

Third. The State of Texas is also entitled to have as speedy a determination of the matter as the convenience of this court will permit, because of the matters and things involved in the controversy.

Wherefore, the defendant in error respectfully requests this court to advance this cause and set the same for submission at as early a date as is convenient and practicable to the court at its October term, 1908.

R. V. DAVIDSON,
Attorney General.
JEWEL P. LIGHTFOOT,
Assistant Attorney General.
T. W. GREGORY,
G. W. ALLEN,
Attorneys for Defendant in Error, The State of Texas.

RECEIVERSHIP CASE.

WATERS-PIERCE OIL COMPANY,
Plaintiff in Error,
vs.
THE STATE OF TEXAS,
Defendant in Error.

SUIT PENDING IN THE SUPREME COURT OF THE UNITED STATES.

And now comes the defendant in error, the State of Texas, and moves the court, in the event that the court should overrule the motion to dismiss the writ of error made in this case by the defendant in error, to advance this cause and set the same for submission at as early a date as is practicable, and thereupon shows:

First. That a suit was brought by the State of Texas against the Waters-Pierce Oil Company, a Missouri corporation, for alleged violation of the anti-trust laws of the State of Texas, known as the Act of 1899 and the Act of 1903, the purpose of the suit being to recover penalties and to forfeit the permit of the Waters-Pierce Oil Company to do business in the State. A trial and judgment before a jury resulted in a finding that the Waters-Pierce Oil Company had violated several sections of each of said acts, and had violated the law therein for each and every day for seven years, being the whole period of time since its admission to the State, and resulting in penalties aggregating the sum of $1,623,900. Immediately upon the rendition of this judgment, the State filed an application for a receiver for all the property of the corporation situated within the State of Texas, and the court granted said application and appointed a receiver and directed him to take charge of all of the property, but permitted the defendant to supersede said judgment by giving a bond in the sum of $100,000. The judgment of the trial court was affirmed by the Court of Civil Appeals of the State of Texas, to which an appeal was taken by the Waters-Pierce Oil Company, and a writ of er[illegible] refused by the Supreme Court of the State, thus making final the [illegible]ment that had been rendered appointing a receiver, and the case was brought here on a writ of error sued out by the Waters-Pierce Oil Company to the Court of Civil Appeals of Texas.

Second. The plaintiff in error questions the validity of several of the statutes of the State of Texas, and says the same are repugnant to the Constitution of the United States, and as these statutes were upheld

by the courts of the State of Texas and are laws now in force under which the State of Texas and its citizens and inhabitants are doing business, it is of the utmost importance for the question to be finally determined whether or not they are valid laws, so that the State of Texas and the public generally may know whether or not such laws should be respected and obeyed.

Wherefore, defendant in error prays that this cause may be advanced and set for submission at as early a date as is practicable and convenient for this court.

R. V. DAVIDSON,
Attorney General.
JEWEL P. LIGHTFOOT,
Assistant Attorney General.
T. W. GREGORY,
G. W. ALLEN,
Attorneys for Defendant in Error, The State of Texas.